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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 21

WARREN-BRADSHAW DRILLING COMPANY,
PETITIONER,

vs.

O. V. HALL, INDIVIDUALLY AND AS AGENT OF
W. N. SLAID, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 19, 1942.

CERTIORARI GRANTED JUNE 8, 1942.

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TRANSCRIPT.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, AMARILLO DIVISION.

O. V. HALL, Individually and as Agent for W. N. SLAID, EDGAR SLAID, E. S. MORCAN, A. D. HARMON, J. M. HUDDLESTON, J. R. MILLER AND B. R. GRAY,

Versus Civil Action No. 156.

WARREN-BRADSHAW DRILLING COMPANY.

BE IT REMEMBERED, that at a term of the District Court of the United States in and for the Northern District of Texas, Amarillo Division, at Amarillo, Texas, begun and holden at Amarillo on the 18th day of September, 1940, and which is not yet adjourned, the Honorable James C. Wilson, United States District Judge for the Northern District of Texas, presiding, the following proceedings were had, and the following cause came on for trial and was tried, to-wit:

O. V. Hall, Individually and as Agent for W. N. Slaid, Edgar Slaid, E. S. Morgan, A. D. Harmon, J. M. Huddleston, J. R. Miller and B. R. Gray, Plaintiffs,

vs. Civil Action No. 156.

Warren-Bradshaw Drilling Company, Defendant.

PLAINTIFFS' FIRST AMENDED ORIGINAL PETITION.

Filed: 2-3-41.

(Title Omitted.)

To the Honorable Judge of Said Court:

Comes now O. V. Hall, individually and as agent of W. N. Slaid, Edgar Slaid, E. S. Morgan, A. D. Harmon, J. M. Huddleston, J. R. Miller, and B. R. Gray, and

leave of the Court first being had and obtained so to do, files this his First Amended Original Complaint in lieu of and in substitution for his Original Complaint heretofore filed, and complains of the Warren-Bradshaw Drilling Company, a corporation, duly and legally incorporated under and by virtue of the laws of the State of Oklahoma, and operating in the State of Texas under a permit to do business in Texas, and with an agent in Dallas County, Texas, upon whom service of citation may be had.

I.

This plaintiff would show that this cause originates under the Fair Labor Standards Act of 1938 (29 U. S. C. A. 201) as hereinafter more fully appears, and is a claim for overtime hours worked under said Act, which the employer of these claimants has refused to pay. This plaintiff would further show that the amounts claimed hereunder exceed the sum of Three Thousand ($3,000) Dollars exclusive of interest and costs, and is a proceeding arising under a law regulating commerce. This suit is also for the collection of a penalty provided under said Act and the collection of attorney's fees in addition thereto.

II.

This plaintiff would show that they had all followed the oil fields for a number of years and in doing that work had specialized in what is commonly called among the oil field fraternity in drilling and roughnecking. Both of said occupations are highly specialized and are occupations which are peculiar to the oil industry. This plaintiff would show that the employer of himself and the other claimants, the Warren-Bradshaw Drilling Com-

pany, was engaged in drilling wells for oil and gas during the time that these claimants were working for it in Moore, Hutchinson, Gray and Carson Counties, in the State of Texas, and it was while they were working for their said employer in the above localities that the claims herein set out arose.

III.

This plaintiff would show that these claimants had all been working for the said Warren-Bradshaw Drilling Company prior to the passage of the Fair Labor Standards Act, which became effective in October, 1938, and at the time that said Act became effective, that the said defendant wholly failed to make any effort to comply with said Act but continued to work its said employees as it had in the past. This plaintiff would show that week after week, their said employer would work these men in excess of the maximum hours provided by said Act, but that no provision was made and no payments were made to these claimants at the rate of time and a half for the hours worked in excess of the hours provided by said statute.

IV.

This plaintiff would show that the drilling and roughnecking that these claimants were doing was a part of the procedure necessary for the marketing of oil and gas and after the claimants finished the work they were doing and as a necessary part of same, the oil that was produced from the wells drilled by them was run into the pipe lines or shipped to the market by other means and as such moved in commerce. The defendant itself started the oil produced into interstate commerce or produced oil that later moved in commerce all as contem-

plated by the Fair Labor Standards Act of 1938. In this connection, they would show that the defendant knows to whom said oil was sold and has records to show said sales which these claimants do not have and the defendant is hereby given notice to produce said records and receipts or secondary evidence will be offered to prove the existence of same.

V.

This plaintiff would further show that they were all engaged in commerce or in the production of goods for commerce as that term is used in the Act while employed by the defendant and that none of the exceptions to liability provided in the Fair Labor Standards Act of 1938 apply to any of them.

VI.

This plaintiff would further show that demand has been made upon the defendant for the time and a half for the overtime hours worked by these claimants but that the defendant has failed and refused to pay said amounts and that the hours and amounts due these claimants are as follows:

Kenneth Volgamore ...	90 hours @ 68¢	$ 61.20
1. O. V. Hall	686 hours @ 44¢	$ 301.84
2. W. N. Slaid	670 hours @ 68¢	$ 455.60
3. Edgar Slaid	540 hours @ 40¢	$ 216.00
4. E. S. Morgan	790 hours @ 44¢	$ 347.60
5. A. D. Harmon	684 hours @ 40.5¢	$ 277.02
6. J. M. Huddleston	680 hours @ 40¢	$ 272.00
7. J. R. Miller	115 hours @ 44¢	
	200 hours @ 68¢	$ 186.50
8. B. R. Gray	540 hours @ 40¢	$ 216.00
Total		$2,333.78

This plaintiff would show that though demand has been made upon the defendant that the said defendant has failed and refused to pay said amounts and these claimants now seek double the amounts above set out as a penalty as provided in said Fair Labor Standards Act, to their damage in the sum of $4,667.56, for which they here sue.

VII.

This plaintiff would further show that by reason of the defendant's refusal to pay the overtime due these claimants that it has been necessary for them to employ attorneys to prosecute this cause for them and a reasonable charge for said attorney's fee is the sum of $1,000 which the defendant has become obligated to pay by virtue of its refusal to pay said overtime and as is provided in the Fair Labor Standards Act, to the plaintiff's additional damage in the sum of $1,000, for which he here sues.

Wherefore, premises considered, this plaintiff prays that the defendant be cited in terms of the law to appear and answer herein and upon final hearing that this plaintiff have judgment against the defendant for $5,667.56, costs of suit, and all other relief to which he may be entitled, both at law and in equity to which he may be entitled.

SCARBOROUGH, YATES & SCARBOROUGH.

(Signed) By DAVIS SCARBOROUGH,
Attorneys for Plaintiff.

ANSWER OF DEFENDANT.

6 Filed: 7-7-41.

(Title Omitted.)

Comes now the defendant, Warren-Bradshaw Drilling Company, and for answer to the Amended Complaint filed herein by the plaintiffs, the defendant alleges and states as follows:

I.

Defendant denies generally each and every allegation contained in said amended complaint except such portions thereof as are herein specifically admitted.

II.

Defendant admits that it is a corporation, duly and legally incorporated under and by virtue of the laws of the State of Oklahoma and duly authorized to do business in the State of Texas; and defendant admits that it has been and is extensively engaged in the drilling of wells under contract in the State of Texas with the owners of oil and gas leases and properties, and that such drilling has been done for the purpose of producing oil and gas from such wells by the owners thereof. Defendant admits that the plaintiffs have, at certain times in the past, been employed by the defendant in the operation of their drilling of wells in the State of Texas.

III.

Defendant specifically denies that the plaintiffs, or either of them, were employed by the defendant or worked

for the defendant at any employment or any capacity which constituted interstate commerce.

IV.

Defendant specifically denies that the plaintiffs, or either of them, have ever performed any work or labor for the defendant for which they have not been fully paid, and defendant denies that it is indebted to the plaintiffs, or either of them, in any sum whatsoever, and defendant denies that plaintiffs, or either of them, are entitled to recover any amount from the defendant herein.

Wherefore, defendant prays that plaintiffs and each of them take nothing herein against defendant and that the defendant be dismissed herefrom with its costs.

(Signed) FRANK SETTLE,
(Signed) E. O. MONNETT,
(Signed) SAM CLAMMER,
SETTLE, MONNETT & CLAMMER

and

1001 Philtower Building,
Tulsa, Oklahoma.

UNDERWOOD, JOHNSON,
DOOLEY & WILSON.
(Signed) W. M. SUTTON,
Attorneys for Defendant.

Amarillo, Texas.

TRANSCRIPT OF THE EVIDENCE.

8 Filed: 9-8-41.

10 STATEMENT OF FACTS.

(Title Omitted.)

Appearances:
Hon. James C. Wilson, U. S. District Judge, Presiding.

Davis Scarborough, Esq., Abilene, Texas, Attorney for the Plaintiffs.

Frank Settle, Esq., (Settle, Monnet & Clammer), 1001 Philtower Building, Tulsa, Oklahoma, W. M. Sutton, Esq., (Underwood, Johnson, Dooley & Wilson), Amarillo Building, Amarillo, Texas, Attorneys for the Defendant.

Be It Remembered that on the 7th day of July, A. D. 1941, at 10:00 o'clock A. M., the same being one of the regular days of the May Term of the District Court of the United States for the Northern District of Texas, Amarillo Division, came on to be heard the above entitled and numbered cause at Amarillo, Texas, whereupon the following facts were admitted in evidence by the Court:

Mr. Scarborough:

Your Honor, for the plaintiff we have subpoenaed a member of the Texas Railroad Commission with headquarters over at Pampa. I anticipate he will be here, but it will be noon before he gets here with his records. I anticipated he would be a willing witness, but it developed I had to subpoena him. I have, however, this is a suit under the Wage and Hour Act, got one of these

men—there are eight of these fellows in here, nine really, the ninth man is in the armed forces of the United States. I got a wire from him this morning that he had been unable to locate his Colonel to sign a furlough. His amount is only about one hundred dollars, and if the Court will permit me, I would like to perfect that proof naturally to protect him. In other words I don't want to try the case without him here. I don't feel like it is right as he is in the army. I have a record prepared showing the number of hours worked, days worked these hours. I had anticipated he would be here. He had a furlough to be here July 3, date the case was originally set. I would like to perfect that proof.

The Court:

If it will be just the detail as to the time he worked, has he got that?

Mr. Scarborough:

Yes, sir, his testimony on the other will be the same as the other eight employees. How about it; will you agree that this prepared statement is correct as to the hours worked on the different dates and at the wage shown?

Mr. Sutton:

I don't know what man you are talking about. I don't know as there will be any dispute as to the statement he has prepared and what the record of the Warren-Bradshaw Company would show. Now, if that proof has to be completed at some future time some arrangement should be made for any rebuttal.

Mr. Scarborough:

I previously furnished counsel the list of time the plaintiff is going to testify to so he could check over their

records. I now have that record. If they have no objection I can just introduce this to show what he would testify to if present which corresponds with the information contained in their records.

The Court:

Have an opportunity to offer in evidence, then later take his deposition.

Mr. Sutton:

We can't agree to that copy; it isn't admissible.

The Court:

Does that comprise fully what his testimony would be?

Mr. Scarborough:

Yes, sir, just the time he has worked, number of hours that he has worked, and the other facts he would testify to would be just cumulative to what the witnesses here would testify to.

The Court:

I am willing to go as far as I can.

Mr. Scarborough:

I am going to leave him out if necessary. I just don't want him to suffer because he can't be here.

The Court:

In this kind of proceeding the Court can postpone it and take further evidence, take depositions, or anything else. If you want to have him present the Court can later on hear his testimony. You better just go as far as you can with the issues and witnesses, plaintiffs, you have and then see about further hearing. Are the defendants ready?

Mr. Sutton:
Ready.

Mr. Scarborough:
If your Honor please, I would like to make a short statement about the nature of this case, which I think will simplify things a great deal. Warren-Bradshaw Drilling Company is a Tulsa, Oklahoma corporation which was engaged in drilling wells for oil and gas in Texas, in Potter county and two or three adjoining counties. Warren-Bradshaw drilled these wells under contract for someone else, which in our opinion amounts to being engaged in drilling oil wells and producing goods for commerce which would bring them under the rulings of the National Labor Act. In that connection, the plaintiff expects to prove that in paying these employees Warren-Bradshaw paid these men so much a day. For instance, they paid some of their men six dollars a day; if these men worked, say, twenty hours a week, they were paid for this number of hours at $6.00; if they worked seven days a week, they were still paid this $6.00 a day. In other words, the scale wasn't changed regardless of how many hours a week these men worked. It is the plaintiff's contention in this case that having employed these men during the time that they fixed the hourly wage and daily wage, be a matter of contract. Then after this man had passed a specified number of hours per week, when he worked in excess of that number of hours per week, then they owed this man time and a half, and not having paid it are responsible for time and a half, double amount and penalty.

The Court:
They made no contract in any effort to regard the letter of the law?

Mr. Scarborough:

No, there was no change in their dealings prior to the effective date of the Act up until approximately a year ago; they operated two years without change.

The Court:

Just went ahead?

Mr. Scarborough:

Yes, sir, under the old procedure, without making any change whatever. It is our contention that they were engaged in production of goods for commerce, that the oil moved in Interstate Commerce; and they having started that process they were under the terms of the Act.

Mr. Settle:

The answer of defendant is an admission of corporate existence, that it has been operating under authority of Texas, drilling some wells, drilling some holes in the ground, in Texas. It then denies that it is engaged in Interstate Commerce, anything coming under the Wage and Hour Act. That they were not in the oil business, not producing oil, merely were hired to make holes in the ground and stop and not produce oil, and therefore weren't subject to the terms of the Act. We do admit that these boys worked at certain jobs for the defendant, at certain times. Deny that we owe them anything above what we paid them. We paid them in full, the amount we agreed to pay to them. We feel that is all the plaintiffs are entitled to have for their work that they did for the defendant.

The Court:

Did they produce oil, or were these dry holes?

Mr. Settle:

Most of them were producers; I haven't found any dry holes.

The Court:

Then as I understand, your defense consists in the fact that Warren-Bradshaw is just a contractor; that is really what it amounts to?

Mr. Settle:

Yes, sir.

The Court:

Wells, that if it had been drilling wells for yourself you concede that you would have been liable, if you produced oil?

Mr. Settle:

Yes, sir. We also contend that even though defendant wasn't subject to the requirements of the Act, that they did comply with the requirements of the Act in that they paid these particular employees and all others far above the requirements of the Act.

The Court:

That is, if it be distributed over that period?

Mr. Settle:

Yes, sir. In other words that the Act is a minimum wage Act, and that they were paid far above the minimum wage requirements.

The Court:

Is there any disagreement between you all about the hours these men worked overtime?

Mr. Settle:

There is some discrepancy, Your Honor.

(At this point an instrument was identified as Plaintiff's Exhibit "A" Stipulation.)

The Court:
You deny all claims of overtime?

Mr. Settle:
Yes, Your Honor.

Mr. Scarborough:
The plaintiffs introduce first, if Your Honor please, "Plaintiff's Exhibit A—Stipulation" which is a stipulation covering the wells drilled by Warren-Bradshaw Drilling Company, with a form of contract, which was used by the Warren-Bradshaw Drilling Company in the drilling of these wells.

The Court:
All right.

(PLAINTIFF'S EXHIBIT A"—Stipulation" as above introduced appears herein copied in full, as follows):

(Caption Omitted.)

"STIPULATION.

It Is Hereby Stipulated by the defendant through its attorneys of record herein that in compliance with the request of plaintiffs' attorneys that defendant furnish the plaintiff with certain facts as shown by defendant's records, the defendant stipulates and agrees that its records show with reference to defendant's employment of the plaintiffs in connection with the drilling of wells in the State of Texas and the location of such drilling and the respective owners of the property on which such wells were drilled, all as set out in the following schedules:

Wells drilled by Warren & Bradshaw Drilling Company in the State of Texas since October 15, 1938, and upon which O. V. Hall worked on as an employee:

Company	Well
Sinclair Prairie Oil Co.	Coomley #7
Bradshaw Oil & Gas Co.	Sackett #9
Sinclair Prairie Oil Co.	Coomley #8
Sunray Oil Company	Lovitt #3
Sunray Oil Company	Ferguson #4
The Texas Company	Cooper #7
Bradshaw Oil & Gas Company	Pope #4
Panhandle Eastern Pipe Line Company	Sneed-1-24
Stanolind Oil & Gas Co.	Kinzer #11
Stanolind Oil & Gas Co.	Kinzer #12
Stanolind Oil & Gas Co.	Kinzer #13
Stanolind Oil & Gas Co.	Sackett #2
Stanolind Oil & Gas Co.	Cobb A-5
Stanolind Oil & Gas Co.	Cobb A-6
Stanolind Oil & Gas Co.	Cobb A-7
The Texas Company	Pond #19
The Texas Company	Pond #20
The Texas Company	Pond #22
The Texas Company	Lewis #20
The Texas Company	Lewis #21
The Texas Company	Lewis #22
The Texas Company	Davis B-19
The Texas Company	Lewis #23
The Texas Company	Lewis #25
Stanolind Oil & Gas Co.	Pitcher A-16
The Texas Company	Lewis #26
The Texas Company	Lewis #27
The Texas Company	Lewis #31
The Texas Company	Lewis #36
The Texas Company	Lewis #37
The Texas Company	Lewis #32
The Texas Company	Lewis #39

Wells drilled by Warren & Bradshaw Drilling Company in the State of Texas since October 15, 1938, and upon which W. N. Slaid worked on as an employee:

Company	Well
Sinclair Prairie Oil Company	Merten B-2
Bradshaw Oil & Gas Company	Pope #4
The Texas Company	Cooper #7
Stanolind Oil & Gas Company	Kinzer #11
Stanolind Oil & Gas Company	Kinzer #12
Stanolind Oil & Gas Company	Kinzer #13
Stanolind Oil & Gas Company	Sackett #2
Stanolind Oil & Gas Company	Cobb A-5
Stanolind Oil & Gas Company	Cobb A-6
Stanolind Oil & Gas Company	Cobb A-7
The Texas Company	Pond #16
The Texas Company	Pond #18
The Texas Company	Pond #21
The Texas Company	Pond #22
The Texas Company	Lewis #20
The Texas Company	Lewis #21
The Texas Company	Lewis #22
The Texas Company	Lewis #23
The Texas Company	Lewis #25
The Texas Company	Lewis #26
The Texas Company	Lewis #27
The Texas Company	Lewis #29
The Texas Company	Lewis #31
The Texas Company	Lewis #36
The Texas Company	Lewis #37
The Texas Company	Lewis #32

Wells drilled by Warren & Bradshaw Drilling Company in the State of Texas since October 15, 1938, and upon which E. P. Slaid worked on as an employee:

Company	Well
Skelly Oil Company	Herring 7
Bradshaw Oil & Gas Co	Pope 4
The Texas Company	Cooper 7
Stanolind Oil & Gas Co.	Kinzer 11
Stanolind Oil & Gas Co.	Kinzer 12
Stanolind Oil & Gas Co.	Kinzer 13
Stanolind Oil & Gas Co.	Sackett 2
Stanolind Oil & Gas Co.	Cobb A-5
Stanolind Oil & Gas Co.	Cobb A-6
Stanolind Oil & Gas Co.	Cobb A-7
The Texas Company	Pond 16
The Texas Company	Pond 18
The Texas Company	Pond 21
The Texas Company	Lewis 20
The Texas Company	Lewis 21
The Texas Company	Lewis 22
The Texas Company	Lewis 25
The Texas Company	Lewis 26
The Texas Company	Lewis 27
The Texas Company	Lewis 29
The Texas Company	Lewis 31
The Texas Company	Lewis 36
The Texas Company	Lewis 37
The Texas Company	Lewis 32

Wells drilled by Warren & Bradshaw Drilling Company in the State of Texas since October 15, 1938, and upon which E. S. Morgan worked on as an employee:

Company	Well
Stanolind Oil & Gas Company	McConnell #6
Sinclair Prairie Oil Company	Coomley #7

Company	Well
Bradshaw Oil & Gas Company	Sackett #9
Sinclair Prairie Oil Company	Coomley #8
Sunray Oil Company	Lovitt #3
Sunray Oil Company	Ferguson #4
The Texas Company	Cooper #7
Bradshaw Oil & Gas Company	Pope #4
Stanolind Oil & Gas Company	Kinzer #11
Stanolind Oil & Gas Company	Kinzer #12
Stanolind Oil & Gas Company	Kinzer #13
Stanolind Oil & Gas Company	Sackett #2
Stanolind Oil & Gas Company	Cobb #A-5
Stanolind Oil & Gas Company	Cobb #A-6
Stanolind Oil & Gas Company	Cobb #A-7
The Texas Company	Pond #16
The Texas Company	Pond #18
The Texas Company	Pond #21
The Texas Company	Pond #22
The Texas Company	Lewis #20
The Texas Company	Lewis #21
The Texas Company	Lewis #22
The Texas Company	Lewis #23
The Texas Company	Lewis #25
The Texas Company	Lewis #26
The Texas Company	Lewis #27
The Texas Company	Lewis #29
The Texas Company	Lewis #31
The Texas Company	Lewis #36
The Texas Company	Lewis #37
Stanolind Oil & Gas Company	Saunders #8
The Texas Company	Lewis #32
The Texas Company	Barrett #9
The Texas Company	Barrett #10

Wells drilled by Warren & Bradshaw Drilling Company in the State of Texas since October 15, 1938 and upon which A. D. Harmon worked on as an employee:

Company	Well
Skelly Oil Company	Herring 7
Panhandle Eastern Pipe Line Co.	Sneed 1-20
Panhandle Eastern Pipe Line Co.	Sneed 1-24
Panhandle Eastern Pipe Line Co.	Sneed 1-3
Panhandle Eastern Pipe Line Co.	Brown 1-64
Panhandle Eastern Pipe Line Co.	Sneed 1-50
Panhandle Eastern Pipe Line Co.	Sneed 1-37
The Texas Company	Pond 14
The Texas Company	Pond 15
The Texas Company	Pond 18
The Texas Company	Pond 16
The Texas Company	Pond 21
The Texas Company	Pond 22
The Texas Company	Lewis 20
The Texas Company	Lewis 22
The Texas Company	Lewis 23
The Texas Company	Lewis 25
The Texas Company	Lewis 26
The Texas Company	Lewis 27
The Texas Company	Lewis 28
The Texas Company	Lewis 29
The Texas Company	Lewis 31
The Texas Company	Lewis 36
The Texas Company	Lewis 37
Stanolind Oil & Gas Company	Saunders 8
The Texas Company	Lewis 32

Wells drilled by Warren & Bradshaw Drilling Company in the State of Texas since October 15, 1938, and upon which J. M. Huddleston worked on as an employee:

Company	Well
Stanolind Oil & Gas Co.	McConnell #6
Sinclair Prairie Oil Company	Coomley #7
Bradshaw Oil & Gas Company	Sackett #9
Sunray Oil Company	Lovitt #3
Sunray Oil Company	Ferguson #4
Skelly Oil Company	Herring #7
Panhandle Eastern Pipe Line Company	Sneed 1-24
Panhandle Eastern Pipe Line Company	Sneed 1-3
Panhandle Eastern Pipe Line Company	Brown 1064
Panhandle Eastern Pipe Line Company	Sneed 1-20
Panhandle Eastern Pipe Line Company	Sneed 1-50
Panhandle Eastern Pipe Line Company	Sneed 1-37
The Texas Company	Pond #14
The Texas Company	Pond #15
The Texas Company	Pond #16
The Texas Company	Pond #18
The Texas Company	Pond #21
The Texas Company	Pond #22
Stanolind Oil & Gas Company	Picher A-14
The Texas Company	Lewis #25
The Texas Company	Lewis #26
The Texas Company	Lewis #27
The Texas Company	Lewis #29
The Texas Company	Lewis #31
The Texas Company	Lewis #36
The Texas Company	Lewis #37
The Texas Company	Lewis #20
The Texas Company	Lewis #32

Wells drilled by Warren & Bradshaw Drilling Company in the State of Texas since October 15, 1938 and upon which J. R. Miller worked on as an employee:

Company	Well
The Texas Company	Pond #17
The Texas Company	Pond #19
The Texas Company	Pond #20
Stanolind Oil & Gas Co.	Pitcher A-14
The Texas Company	Lewis #25
The Texas Company	Lewis #26
The Texas Company	Lewis #24
The Texas Company	Lewis #27
The Texas Company	Lewis #29
The Texas Company	Lewis #31
The Texas Company	Lewis #36
The Texas Company	Lewis #37
The Texas Company	Lewis #32

Wells drilled by Warren & Bradshaw Drilling Company in the State of Texas since October 15, 1938, and upon which B. R. Gray worked on as an employee:

Company	Well
Sinclair Prairie Oil Co.	Coomley #7
Sinclair Prairie Oil Co.	Merten B-2
Bradshaw Oil & Gas Co.	Pope #4
The Stanolind Oil & Gas Co.	Kinzer #11
The Stanolind Oil & Gas Co.	Kinzer #12
The Stanolind Oil & Gas Co.	Kinzer #13
The Stanolind Oil & Gas Co.	Sackett #2
Stanolind Oil & Gas Co.	Cobb A-5
Stanolind Oil & Gas Co.	Cobb A-6
Stanolind Oil & Gas Co.	Cobb A-7
The Texas Company	Lewis #21
The Texas Company	Lewis #20

Company	Well
The Texas Company	Pond #16
The Texas Company	Pond #18
The Texas Company	Pond #21
The Texas Company	Pond #22
The Texas Company	Lewis #22
The Texas Company	Lewis #23
The Texas Company	Lewis #25
The Texas Company	Lewis #26
The Texas Company	Lewis #27
The Texas Company	Lewis #29
The Texas Company	Lewis #31
The Texas Company	Lewis #36
The Texas Company	Lewis #37
The Texas Company	Lewis #32
The Texas Company	Barrett #9
The Texas Company	Barrett #10

It is further stipulated that the instrument attached hereto, marked Exhibit A and made a part hereof, is a specimen form of contract commonly used by the defendant in connection with and under which the defendant has drilled wells under contract with and for the owners of the property.

It is further stipulated that this may be used as evidence in the trial of this case.

(Signed) FRANK SETTLE,
E. O. MONNET and
SAM CLAMMER,
Attorneys for Defendant.

26 DRILLING CONTRACT.

This agreement, executed in duplicate this .... day of ....., 19.., by and between .....

with an office in the city of Tulsa, Oklahoma, hereinafter called "Company", and .....of.

Hereinafter called "Contractor",

Witnesseth: That: Whereas, Company is the owner as lessee and desires to have a well known as No. .... drilled and completed on the ..... lease, covering the following described land in ..... county, State of ....., to-wit:

and

Whereas, the Contractor desires to contract for the drilling of said well;

Now, Therefore: The parties hereto each in consideration of the covenants and agreements of the other have mutually agreed as follows, to-wit:

1. For the consideration and upon the terms and conditions hereinafter set out Contractor shall furnish everything necessary and proper for that purpose (except such things as are hereinafter specifically provided to be furnished by Company) and at the Contractor's risk, cost and expense, drill for Company,

2. Contractor further agrees

(a) To make necessary repairs to derrick and/or other property belonging to Company when same are damaged by negligence of Contractor or its employees:

(b) To remove, at Company's expense, all boilers, open flames and fires to a safe distance from the well when oil or gas is encountered in sufficient quantities to en-

danger the derrick and/or Company's other property in close proximity.

"Exhibit A" (1):

(c) To carefully examine derrick, casing and other materials and appliances furnished by Company and notify Company of any defects found therein so that Company may replace such defective materials or appliances.

(d) To return all materials, equipment and appliances furnished by Company at the completion or abandonment, of said well in as good condition as when received by Contractor, ordinary wear and action of the elements alone excepted.

(e) To properly set, anchor and cement casing of proper size at depths to be specified by a Superintendent of Company so as to shut off water, oil and gas, in the presence of said Superintendent or authorized representative of Company, and in so doing to shut down operations without expense to Company for such reasonable length of time as is necessary to permit cement to set or harden.

(f) To insulate boilers and equip same with low pressure burners and pre-heat boiler feed water.

(g) To take cores of sands or formations encountered when requested by Company and to furnish Company samples of the formations encountered as requested by Company.

(h) To use casing protectors and to rat-hole ahead when requested by Company; and if it is deemed by Company necessary to straight-ream, to do so at Con-

tractor's expense; Provided, However, in cable drilling all under-reaming, straight reaming and lowering casing for the purpose of shutting off caves, oil, gas and water shall be done at Contractor's expence.

(i) To prosecute the drilling of said well with due diligence and in accordance with the usages and customs of skillful contractors, and to complete said well so that it shall not at any point, be more than five (5) degrees from vertical, test to be made to determine deviation from vertical at least once each five-hundred lineal feet drilled, unless such test or tests are specifically waived by the Company. Additional tests shall be made at the request of Company representatives. All risks and costs of making vertical tests shall be borne by the Contractor. If the well is found to be more than five (5) degrees off the vertical, it shall, at cost of Contractor, be plugged back and re-drilled in such manner as to satisfy the above specifications.

(j) To give Company the free use and exclusive possession of said well, derrick, boilers, engines, machinery, ropes, tools and any other appliances belonging to Contractor in the event Contractor fails to use due diligence in the performance of this contract, so that Company may complete the drilling of said well, after which Company agrees to return to Contractor all of Contractor's property so used and employed in as good condition as when received, ordinary wear and action of the elements alone excepted.

(k) To observe and fully comply with (1) all the rules and regulations of the state in force in the locality in which said well is located, and (2) the provisions of the workmen's compensation laws of said state and to carry full and adequate workmen's compensation and

employer's liability insurance covering at all times each, every and all persons employed by Contractor in connection with Contractor's operations hereunder, including casing crews, and to carry full and adequate public liability insurance, valid policies covering said insurance to be submitted to Company for its approval at the time of the execution hereof, and to hold Company harmless from any and all liability for damage to the person and/or property of any and all persons resulting from the operations of Contractor hereunder.

(l) To drill said hole with a diameter of not less than .... inches and if the same results in a dry hole or unproductive well to plug and abandon same in accordance with the laws and regulations of the state in which said well is located, at the expense of the Company.

(m) To continue drilling below a depth of .... feet at the request of Company, such drilling, however, to be paid for by Company at the day rate hereinafter specified.

(n) To furnish satisfactory proof to Company that all bills for labor and materials purchased have been paid by Contractor.

(2).

(o) Contractor agrees to and does hereby accept full and exclusive liability for the payment of any and all taxes and contributions for unemployment insurance and for old age retirement benefits, pensions and annuities now or hereafter imposed by the Government of the United States and by the government of any state of the United States which are measured by the wages, salaries or other remuneration paid to persons employed by the

Contractor, for its own account, for work that Contractor is required to perform or has performed under the terms of this contract and the Contractor further agrees that in order to relieve Company of any liability for such taxes or contributions it will do everything necessary from time to time to comply with, or bear the burden of contesting, any regulation and any amendment thereto, which may be promulgated by the administrative authority under any such applicable law.

(3) Company shall furnish necessary derrick, casing, anchor and casing clamps, casing shows, control head, master gate valve, float valve, cement, accelerator, fuel and water for the above purpose, but Company shall not be liable to Contractor for damages occasioned by delays in furnishing such materials and/or supplies herein referred to if Company has exercised due diligence in its efforts to secure same if such delays are occasioned by causes beyond the control of Company.

4. If and when Contractor has completed the well in the manner and to the depth herein provided, and has furnished the statements and evidence hereinbefore specified, then the Company shall pay and Contractor agrees to accept as full payment therefor and full consideration hereunder as follows, to-wit:

(a) For each lineal foot of hole in the well which is so completed the sum of $.... per foot; Provided, that in the event Company elects to cause drilling to be discontinued on the said well at any depth less than that hereinbefore specified, then the rate per foot for the drilling theretofore done shall be at such rate as will be fair and reasonable between the Company and the Contractor taking into consideration all the circumstances with reference to such well at that time.

(b). For all work in connection with said well which shall be hereafter agreed upon between the parties hereto, to be paid for on a per diem basis the sum of $.... per day of twelve hours when drilling or coring with rotary tools, and $.... per day of twelve hours when drilling with standard tools, unless hereinbefore provided for.

5. If Contractor is required by order of any lawful authority or by any reason whatsoever over which Company has no direction or control to suspend or shut down drilling operations hereunder then such suspension or shut-down shall be at Contractor's expense; Provided, However, if Contractor is directed by Company to suspend or shut down drilling operations for any period in excess of .... days, the Company shall pay Contractor for such number of days of such excess at the rate per day hereinabove provided.

6. If Contractor's property while on said premises be damaged or destroyed by reason of the sole negligence of Company or its employees acting within the scope of their employment, the Company shall reimburse Contractor for such loss or damages and if any of Company's property is damaged or destroyed by reason of the negligence of Contractor or Contractor's employees acting within the scope of their employment, then Contractor shall reimburse Company for its loss or damage so sustained.

7. If the property of either Contractor or Company is damaged or destroyed by the act of God or the negligence of some third party, then and in those events or either of them, neither party shall be liable to the other for any loss or damage so sustained by the other.

In Witness Whereof, the parties hereto have hereunto subscribed their names the day and year first above written.

COMPANY.

By .....,
President.

Attest:

.....,
Secretary.

CONTRACTOR.

By .....,
President.

Attest:

.....,
Secretary.

32 B. R. GRAY, a witness called by plaintiff, being first duly sworn, on oath testified as follows:

Direct Examination.

By Mr. Scarborough:

Q. Your name is B. R. Gray?

A. Yes, sir.

Q. Where do you live, Mr. Gray?

A. At Pampa, Texas.

Q. Mr. Gray, have you ever done any work for the Warren-Bradshaw Drilling Company?

A. Yes, sir.

Q. When did you start to work for it?

A. Well, in, that is part time work, just off and on, went to work for them in March, 1939.

Q. March, 1939?

A. Yes, sir.

Q. Did you keep a record of the number of hours you worked during the time you were employed by the Warren-Bradshaw Drilling Company?

A. Yes, sir.

Q. Have you ever had any experience in bookkeeping, Mr. Gray?

A. Some.

Q. What was that experience?

A. I have worked as a bookkeeper in a bank.

Q. Worked as bookkeeper in a bank?

A. Yes, sir.

Q. That was before you did this work for the Warren-Bradshaw Drilling Company?

A. Yes, sir.

Q. From your experience of being a bookkeeper in a bank, do you have a kind of running idea of bookkeeping?

A. Yes.

Q. Now, Mr. Gray, who was it employed you to work for the Warren-Bradshaw Drilling Company?

A. Well, the driller. I worked for Mr. Slaid.

Q. Mr. Slaid?

A. Yes, sir.

Q. Which one of the Slaid boys was that?

A. W. N.

Q. W. L.?

A. W. N.

Q. W. N. Slaid was a driller for the Warren-Bradshaw Drilling Company?

A. Yes.

Q. He was engaged in drilling a well for the Warren-Bradshaw Drilling Company? At the time you went to work for them?

A. Yes, sir.

Q. Where was it you went to work for the Warren-Bradshaw Drilling Company in March, 1939?

A. Well, it was in Gray county, out at Pampa, a few miles north. Way I could tell, Merton lease.

Q. Pardon?

A. Merton lease.

Q. Now, what type of work were you doing for the Warren-Bradshaw Drilling Company?

A. Called "roughneck." Working as helper.

Q. That is oil field parlance for a driller's helper, is it not?

A. That is right.

Q. Had you done work of that kind before?

A. Yes.

Q. It does require a certain amount of skill, does it?

A. Yes, sir.

Q. Did you have any agreement with Mr. Slaid about the rate of pay you were to receive? In other words, did he tell you how much you were to get?

A. I don't know. I knew when I went out there.

Q. What?

A. Yes, he told me, I guess.

Q. What was the rate of pay you did receive for the work you did?

A. Six dollars and a half a day.

Q. $6.50 per day?

A. Yes, sir.

Q. Now, how many hours a day did you work, when you were working?

A. Worked eight hours a day.

Q. That work that you did, is it steady, or kind of piecemeal?

A. Just part time work.

Q. In other words you would work until a well was completed, then started work when another well started?

A. That is right.

Q. Sometimes have leave between wells and that is what you mean when you call it part time work? When you are drilling wells, you work eight hours a day?

A. Yes.

Q. How many days a week did you ordinarily work?

A. Sometimes would work the whole week.

Q. Depended on how long it took to drill the well?

A. Yes.

Q. You stayed with the job until the well was completed?

A. Yes.

Q. If the well lasted more than a week's time, you worked eight hours a day, seven days a week?

A. That is right.

Q. Now, Mr. Gray, do you have a record there before you to show the time you worked during this period of time?

A. Yes, sir.

Q. Now, what was the first day you worked for Warren-Bradshaw Drilling Company?

A. On March 23, 1939.

Q. Now, for that week commencing March 23, how long did you work?

A. To the 27th.

Q. To the 27th—how many hours did you put in?

A. That would have been forty hours.

Q. How many hours work next time?

A. Went to work May 15, to the 21st.

Q. How many hours did you work that week?

A. Fifty-six hours.

Q. Just go down the list in there of time you worked for Warren-Bradshaw Drilling Company and give us the information—that is, the number of hours a week?

A. On May 22 to 28th, fifty-six hours; July 2—to 26th, 56 hours; July 27th to August 2nd, fifty-six hours; August 3rd to the ninth, fifty-six hours; August 10th to the 14th, forty hours; August 24th to 30th—(interruption).

Mr. Scarborough:

Just a minute—August 10 to 14th, forty hours? Is that what you said?

A. Yes. August 24th to 30th, fifty-six hours; August 31 to September 6, fifty-six hours; September 18, eight hours; September 24th, eight hours; October 9th to 15th, fifty-six hours; October 16 to 22, fifty-six hours; then started on forty-two hours a week. That is in 1939 when the law went into effect. October 24 to 30—

Q. What year is that?

A. That was in 1939. That was October 24 to 30, fifty-six hours; October 31 to November 6, fifty-six hours; November 7 to 13th, fifty-six hours; November 14 to 20, fifty-six hours; November 21 to 22, sixteen hours; December 14 to 20, fifty-six hours; December 22 to 28, thirty-two hours; December 28 to January 4, forty-eight hours; January 5 to the 10th, forty-eight hours; January 12 to the 18th, fifty-six hours; January 19th to the 25th, fifty-six hours; January 26th to the 28th, twenty-four hours; February 5th to the 11th, fifty-six hours; February 12th to the 18th, fifty-six hours; February 23 to 29, fifty-six hours; March 1st to the 7th, fifty-six hours; March 8 to 14, fifty-six hours; March 15 to 21, fifty-six hours; March 23 to 29, fifty-six hours; March 30 to April 5, fifty-six hours; April 6th to 12th, fifty-six hours; April 13 to 14, sixteen hours; April 22 to 27, forty-eight hours; April 29 to May 5, fifty-six hours; May 6 to the 12th, fifty-six hours; May 13 to 19, fifty-six hours; May 20 to 24th, forty hours; May 29 to June 4, fifty-six hours; June 5 to 11, fifty-six hours; June 12 to the 18th, fifty-six hours; June 19 to the 25th, fifty-six hours; June 26 to 28, twenty-four hours; July 6 to 12, forty hours; July 13 to 19, fifty-six hours; July 20 to 26th, fifty-six hours; July 27 to August 2, fifty-six hours; August 3rd to the 9th, fifty-six hours; August 26 to September 1, fifty-six hours; September 2 to 7, forty-eight hours. That is all.

Q. That is the crop? All the work then was done continuously from March 1939 down through the dates you have listed?

A. Yes.

Q. Mr. Gray, when you would work in excess of 44 hours a week during the period October 24, 1938 to October 24, 1939, when you would work more than 44 hours a week, did your employer raise your wage accordingly and pay you time and a half for these hours in excess of forty-four, or were you paid the same rate each day regardless of the number of hours worked?

A. Paid the same rate.

Q. In other words, if you worked twenty hours you got $6.50 a day?

A. Yes.

Q. If you worked seventy hours, you got $6.50?

A. Yes.

Q. The rate wasn't changed if you worked over 42 hours, forty-four, or forty hours per week as the case might be?

A. No.

Q. Where was this work you did, was it in this community, or in and around this certain territory?

A. Called in the Panhandle. Most of it in Gray county.

Q. Most of it in Gray county.

A. Yes.

Q. Where was the rest of it?

A. In Hutchinson.

Q. These adjoining counties to Potter county?

A. Yes.

Q. Just what did your duties consist of out there doing this drilling?

A. Just driller's helper. Whatever he wants to do, hole up, making trips.

Q. Talking about "making trips", going down in the hole?

A. Running pipe, things like that.

Q. The business of Warren-Bradshaw was exploring for oil and gas?

A. Yes.

Q. In doing that, they drilled holes in the ground?

A. Yes.

Q. You as a driller's helper assisted in boring these holes?

A. Yes.

Q. What were your duties in general, what about your duties when the well was completed?

Mr. Sutton:

We object to generalities as to his duties.

Q. After the completion of the well, what were your duties? Generally? Did you have any duties to perform after the well was completed?

A. No.

Q. What were your duties up to the completion of the well; what was the last thing you did towards drilling the well?

A. We ran the casing, strung the pipe in the well, cemented, then pulled the tools down and ran them off.

Q. What kind of tools were you running, operating, were they cable or rotary?

A. Rotary.

Q. Drilling with rotary riggings?

A. Yes.

Q. When you ran the casing in the hole and cemented, that was part of the process necessary in drilling of the well?

A. Yes.

Q. When you, in the drilling of an oil well with a rotary rig, you use casing in the actual drilling operation, do you not?

A. No.

Q. Drill pipe?

A. Drill pipe, yes.

Q. You don't leave that drill pipe in the well after the well is completed?

A. No.

Q. In other words you carry the drill pipe off and use that in drilling some other well?

Mr. Settle:

We want to object to counsel leading.

The Court:

You are leading.

Q. State whether or not you used any casting in the actual drilling of a well with a rotary rig?

A. No, you don't use it only when it is completed.

Q. When the well is completed; that is what I was trying to get at. After you finished with the drill pipe, then did you personally have any duties to perform?

A. State that again?

Q. After you got through drilling a well using this drill pipe in this rotary rig to about where you wanted to go to strike oil, what if anything, what if any duties, did you have?

A. None, only be to tear down and move it, whatever had to do.

Q. What I am getting at, did you and your crew set any casing?

A. Yes.

Q. That was part of the drilling process, setting casing?

A. Yes.

Q. The actual drilling was completed when you set the casing?

A. That is right, with a rotary.

Q. What use is the casing you said you cemented in a well?

A. It is used to produce oil through.

Q. The casing you put in the well and cement in is what is left in the well to produce oil through?

Mr. Settle:
We want to object to counsel continuously leading.

Mr. Scarborough:
I am not trying to infringe on the Court's ruling, but this is a technical matter and I don't know much about it.

The Court:
Overrule.

Q. State whether or not after the drilling is completed you remove this casing you put in the well in cement?
A. No, sir.
Q. What is done with the casing that you cement in the well?
A. It is left.
Q. What is the purpose of the casing left in the well?
A. To produce oil through.
Q. Where does the oil go that comes through the casing?
A. Well it is run in tanks, pumped through pipe lines, wherever it goes.
Q. Was that procedure followed in these wells you drilled, or helped to drill?

Mr. Settle:
We object to just making general questions about what the process might be. Specific instances of what this man did might be admissible.

The Court:
You mean of the Bradshaw, it's wells?
A. Yes.

The Court:
Overrule.

Mr. Settle:
Exception.

Q. Is that the procedure you always followed?
A. Yes.

The Court:
You mean in this work, the job done here, that is the way you handled it? These particular wells here in Texas?

A. Yes, sir.

Q. Now, as I understand it, you put the casing in the pipe, cement it, move the rig off; now what, if anything, if you know, was done after you had completed the process?

A. Well, they have what they call "cable tools." They move in and drill in there to the oil sand after the rotary is complete.

Q. Who did that work?

A. Warren-Bradshaw.

Q. State, if you know, what was done in these wells drilled by Warren-Bradshaw in this territory; you have already testified about after the oil was reached, was the cable tools moved in after the rotary was moved off?

Mr. Settle:
We object to his calling for a general conclusion as to what was done afterwards.

The Court:
He knows all about it. Let him tell you everything done until he quit the job.

A. Well, I didn't work on the well to complete it; I only stayed while we cemented it. Cable tools finished that, completed the well.

The Court:

You didn't have anything to do with that, you were gone, when the cable tools were put in you were gone somewhere else?

A. Yes.

The Court:

Mr. Scarborough just wants to know the end of your job.

A. It is when we run the casing and cement it, pull the tools down.

Q. What do you do when you tear the tools down?

A. Just move it from the derrick.

Q. Is the same derrick used to operate the cable tools as used in operating the rotary rig?

A. Most of the time it is.

Q. When you tear down, you just carry the tools over to another location?

A. If we had one to move on, yes.

Q. Do you know of your own knowledge what was actually done by the boys running the cable tools on these locations after you moved off? Were you close enough so you knew?

A. Sometimes.

Q. In all these instances you yourself know about, what was the procedure followed by the boys running the cable tools in drilling into pay?

A. Well, they all work on the rotary rigs.

Q. I was asking if any of these men working on cable tools do anything else?

A. No, sir, none of those boys.

Q. Do you yourself know what the operators of the cable tools do after you move off and go on to another location?

The Court:

What do we care about that?

Mr. Scarborough:

Just trying to follow step by step. I have got to show this oil moved into interstate commerce, delivered to tanks, tanks to town and interstate commerce. That is what I am attempting to show.

The Court:

He has already said they drilled it in.

(Mr. Scarborough):

Q. After the cable tool operators drilled in a well, what, if anything, was done towards delivery of the oil that was discovered?

A. It is pumped into tanks as a rule the well is turned over to companies.

The Court:

As to any account like that, well that is just hearsay—were you—you just know that is done?

A. Supposed to be.

Mr. Settle:

If the Court please, we had nothing to do with that. We think it is outside of the issues. We had nothing to do with the production.

The Court:

It is material in there, a little something about what happened after this man finished. You are entitled to show that.

Mr. Scarborough:

Yes.

(Mr. Scarborough):

Q. In these wells that were brought in by the cable operators, the oil, as I understand your testimony, was delivered to tanks?

A. That is right.

Q. Where were these tanks situated?

A. Always close to the well on what they call the lease.

Q. Who maintained and operated these tanks?

A. The companies were drilling the wells for.

Q. That wouldn't be Warren-Bradshaw, you mean whoever Warren-Bradshaw contracted with to drill the well?

A. That is right.

Q. Who delivered the oil to these tanks?

Mr. Settle:

We object; this witness isn't qualified.

The Court:

Haven't you got better evidence than that?

Mr. Scarborough:

I think I have.

The Court:

Don't take up the time, if you have somebody who knows. I know that he knows, but knows in a way he can't swear to it.

(Mr. Scarborough):

Q. The work you did personally during all this period of time constituted all the work you did on these rotary rigs?

A. Yes, sir.

Cross Examination.

By Mr. Settle:

Q. Mr. Gray, you say you started to work on these wells by request of Mr. Salid?

The Court:

You don't have to stand up, Mr. Settle.

Mr. Settle:

I am so accustomed to it—

Q. You started to work in March, 1939, you say, by request of Mr. Slaid, on a well being drilled by Warren-Bradshaw as contractor?

A. Yes.

Q. You say you didn't have any particular agreement, but did receive $6.50 per tower—you didn't say per tower, but is that what it was; what we call a tower?

A. Yes, per day.

Q. As a matter of fact you get that pay whether you work a full tower?

A. I always worked a full tower.

Q. Now when you'd go to work on whichever wells you were drilling, you would rig up first?

A. Yes.

Q. One of these rotary outfits is quite an institution, takes quite a little while to rig up?

A. Well, there is so much work to do.

Q. About how much time would it take to get one rig up ready to start?

A. About two days.

Q. About two days—you helped with that, starting wells on these different jobs during this time you testified about, assisted in rigging up, spent about two days time rigging up?

A. Yes.

Q. When you got down to a certain point where the rotary outfit didn't operate any further, you stopped and set the casing and cemented it, tore out the rig and moved off to some other location, some other lease, or moved into town and stored?

A. That is right.

Q. About how much time would it take you to tear down and move out and move to another location?

A. That all depended—usually a day.

Q. Sometimes longer?

A. No, not as a rule.

Q. You assisted with that also, assisted with moving to a new location?

A. No, we wouldn't move it. Trucks handled.

Q. You would be hired by Mr. Slaid or somebody else, separate jobs?

A. Didn't get a crew to drill a particular job.

Q. You weren't hired for a particular time, except just to go on this particular job, is that right?

A. Well, hired you to go out, expected to work until the job was completed.

Q. If you wanted to, didn't quit, when that job is completed would get the crew together for the next job immediately to go somewhere else and work for some other parties?

A. Yes.

Q. That is what you did?

A. Yes.

Q. Do you know how many different jobs there were included in this time you describe as working from March to October, 1939?

A. You mean how many wells?

Q. How many jobs, yes, that you worked on; how many well jobs you worked on?

A. Approximately twenty-four wells.

Q. And you too, all these, you assisted in rigging up and tearing down?

A. Well, the majority, yes. Not all of them. Maybe a few times wouldn't be there.

Q. Approximately all of them you assisted in rigging up and tearing down?

A. Yes.

Re-Direct Examination.

By Mr. Scarborough:

Q. It was necessary to rig them up and tear down in order to get the well drilled?

A. Yes, sir.

Re-Cross Examination.

By Mr. Settle:

Q. You merely expected and knew you were to get $6.50 every tower you worked; that was your expectation?

Mr. Scarborough:

We object to that on the ground his expectation wouldn't excuse any failure on their part to comply with the law. What his expectations were would have no bearing on the case.

The Court:

I will let him answer.

(Mr. Settle):

Q. Go ahead and answer, Mr. Gray?

A. Well, I don't know I expected. That is what I got. That is what supposed to get.

Q. That is what you were supposed to get, for every tower you worked on, $6.50. They paid you?

A. They paid me, yes.

Q. That was all you expected to get?

A. I don't know, I can't answer that.

The Court:

It is immaterial what he expected. That is, he is not bound by what he expected.

Re-Direct Examination.

By Mr. Scarborough:

Q. You were paid by check by Warren Bradshaw Drilling Company?

A. Yes.

Re-Cross Examination.

By Mr. Settle:

Q. You make any protest to the checks given you?

A. What is that?

Q. You accepted these checks given to you for your labor?

A. Yes.

(Witness excused.)

50 A. D. HARMON, a witness called by plaintiff, being first duly sworn, testified on oath as follows:

Direct Examination.

By Mr. Scarborough:

Mr. Scarborough:

This witness hasn't been sworn; he got here late.

(Witness sworn by clerk and examination proceeded.)

Q. Your name is A. D. Harmon?

A. Yes, sir.

Q. Mr. Harmon, you have worked for the Warren-Bradshaw Drilling Company?

A. Yes, sir.

Q. When was the first work you did for the Warren-Bradshaw Drilling Company?

A. May 8, 1939.

Q. What kind of work did you start out doing?

The Court:

If he did the kind of work Mr. Gray did or not on the same character of job—just ask him if he was, then ask him as to any difference.

Q. Were you here during the entire time Mr. Gray was testifying? You got in a little late?

A. Yes, I was here.

Q. You heard him testify about the type of work he did?

A. Practically all, yes, rotary helper.

Q. In what respects, if any, did your work differ?

A. Didn't differ any, I suppose.

Q. What kind of work were you doing?

A. I was a rotary driller's helper.

Q. Speak out.

A. I was a rotary driller's helper.

Q. What were you paid?

A. Six and a half most of the time. Drew seven a few days.

Q. When was it you drew seven dollars?

A. I drew seven dollars in May.

Q. What year?

A. 1939.

Q. How long did you continue to draw $7.00 a day?

A. I worked, I believe twenty-two days on that well, then I worked seven days again in August, same year.

Q. 1939?

A. Yes.

Q. How many days at $7.00 did you draw in August, 1939?

A Well, I will have to look it up. I have got it here; it was in July and August.

Q. July and August, 1939?

A. Yes.

Q. How many $7.00 days did you put in July and August, 1939?

A. About 23 days.

Q. Now, give us the dates that you worked for Warren-Bradshaw Drilling Company from May, 1939; when you started until you stopped, giving us the date and the number of hours you worked each week? When you get to the place where you are a $7.00 a day man, why, let us know?

A. I went to work on May 8, I worked until the 14th, fifty-six hours; from the 15 to 21st, fifty-six hours; from the 22nd to 28th would be forty hours; that was $7.00. Then I went back to work June 19 and worked until the 25th. I lost some hours. I worked twenty-four hours that week. Then back on the 28th and worked until July 4, fifty-six hours; 5th of July until the 11th, made forty hours; and I worked the 11th. After—that was all $6.50. Started drawing $7.00 the 12th of July—12th to 18th, worked fifty-six hours; from the 19th to the 25th, worked forty-eight hours; 26th to August 1st—let's see—how did I get that $7.00 in there. I made the last seven dollar day on August 3, and then from the 19th to 25th I made forty-eight hours, and from 26th to August 1, fifty-six hours; from the 2nd to the 8th, fifty-six hours; that is August 2nd to 8th; 9th to 15th, fifty-six hours, of August; 16th to 22nd, fifty-six hours; 23d to 29th, fifty-six hours; 30th of August to September 5th, made fifty-six hours; from the 6th of September to the 12th, fifty-six hours; from the 13th to 19th, fifty-six hours; from the 20th to the 26th, fifty-six hours; from the 27th of September to October 3, fifty-six hours; from October 4th to 10th, forty-eight hours; October 11th to 17th, fifty-six hours; from the 18th to 24th, 24 hours; November 1st to 7th, fifty-six hours; from the 8th to

the 14th, fifty-six hours; from the 15th to 21st, fifty-six hours; 22nd to 28th I made 64 hours; and from November 29th to December 5, I made fifty-six hours; December 6th to 12th, made fifty-six hours; from the 13th to 19th, fifty-six hours from the 20th to 26th, twenty four hours; 27th to January 2, 1940, fifty-six hours. You want me to go ahead on 1940? You want that read?

Q. Yes?

A. January 3d to 9th, fifty-six hours.

The Court:

You are in 1940?

A. I am in 1940. January 10th to 16th, forty hours; 17th to 23d, fifty-six hours; 24th to 30th, forty hours; 31st of January to February 6th, twenty-four hours; February 7th to February 13, fifty-six hours; February 14th to 20th, forty-eight hours; February 21 to 27th, thirty-two hours; February 28th to March 5th, fifty-six hours; March 6th to March 12, fifty-six hours; March 13th to March 19th, fifty-six hours; March 20 to 26th, forty-eight hours; March 27th to April 2nd, fifty-six hours; April 3d to April 9th, fifty-six hours; April 10th to 16th, thirty-two hours; April 17th to 23d, sixteen hours; April 24th to 30th, fifty-six hours; May 1st to May 7th, fifty-six hours; May 8th to May 14th, fifty-six hours; May 15th to 21st, fifty-six hours; May 22 to 28th, twenty-four hours; May 29th to June 4th, fifty-six hours; June 5th to June 11th, fifty-six hours; June 12 to 18th, fifty-six hours; June 19 to 25th, fifty-six hours; June 26 to July 2nd, fifty-six hours; July 3rd to July 9th, fifty-six hours; July 10 to 16th, forty hours; July 17 to 23rd, fifty-six hours; July 24 to 30th, fifty-six hours; July 31 to August 6, fifty-six; August 7th to 13th, twenty-four hours; 20th to 26th, fifty-six hours; 27th to September 2nd, fifty-six hours; September 3rd to 9th, forty hours. That is the last work I did up until October, up until they—

Q. Now, except the days you have told us about when you drew seven dollars a day, during the remainder of the time did you draw $6.50?

A. $6.50, yes, sir.

Q. Now, did Warren-Bradshaw Drilling Company make any change in your rate of pay when you would work, for instance, twenty-four hours per week, or when you worked fifty-six hours?

A. No, sir, I drew the same, same pay per day.

Q. In other words they paid you $6.50 a day whether you worked one day or as long as seven days?

A. That is right.

Q. Now, Mr. Harmon, see if you can clear up the situation about the oil produced from these wells. You were on the rotary rig?

A. Yes.

Q. Tell us what you know of your own knowledge, after you left the wells, what was done with the oil?

A. They moved the cable tools in and shot the well. Swedged out, took a test on it, left the tools there until the test was taken by the Railroad Commission; the test went into a tank.

Q. The oil went into a tank?

Mr. Settle:

We object to counsel leading the witness. Object to the witness testifying except about what he actually saw.

A. I have been, worked on locations from them, and be over to the cable tools when doing the work.

The Court:

Would that be on near enough location so you could see it?

A. Yes, sir, 330 yards.

The Court:

Well, I will overrule the objection if he knows.

Q. What if anything was done with the oil?

A. Run into these tanks. It was pumped off somewhere.

Q. It was delivered to some other place than the tanks?

A. Yes, the tanks were some five hundred barrel tanks. Couldn't hold much oil.

Q. Did you ever discuss with Mr. Warren or Mr. Bradshaw any interest that the Warren-Bradshaw Drilling Company had in the wells drilled by them in these localities that you worked on?

A. No, sir, I didn't.

Q. You don't know about any interest the Warren-Bradshaw Drilling Company had in these leases?

A. No, I don't.

Cross Examination.

By Mr. Settle:

Q. Mr. Harmon, did you take that record you read from a day book?

A. Yes, I did. I sure did. I have my books with me.

Q. Mr. Harmon, you were engaged by somebody to work on the different wells that consumed the time you described here?

A. Yes.

Q. Do you know how many jobs there were?

A. I know how many drillers I worked for?

Q. You know what?

A. Know how many drillers.

Q. How many wells?

A. I can tell you in just a minute.

Q. Do you know approximately?

A. Approximately, yes, sir.

Q. What was the number?

A. About twenty-four.

Q. You helped rig up and tear down after you got through with these wells?

A. Most of them, yes, sir.

Q. Took about two days to rig up, two to tear down?

A. Ordinarily, yes, sir.

Q. That is included in the time you are speaking, have testified about?

A. It is.

Q. You just worked on the rotary outfit?

A. That is all.

Q. You assisted on the rotary and in each case when got down to a certain point set the casing in the cement, tore down and pulled out?

A. That is right.

Q. That is all you had to do with the drilling of the wells; that is true in each instance?

A. Yes, sir.

Q. Now then, the rotary is never drilled into oil production, just go down to a certain point? And stop?

A. That is right, didn't go in to oil, no, sir.

Q. You received pay for all that time at the rate of $6.50 for part of it and $7.00 for the other part, you accepted checks in satisfaction of that?

A. Yes, sir.

Q. You did that without protest?

A. Yes, sir.

Q. That is all you expected for your work?

A. At the time, yes, sir.

Re-Direct Examination.

By Mr. Scarborough:

Q. You later took it up with Mr. Warren, he agreed—you took it—

Mr. Settle:

We object to counsel leading.

Q. State whether or not you later took it up with Mr. Warren?

A. Yes, sir.

Q. What was your conversation with Mr. Warren?

Mr. Settle:

We object to that. No pleading of anything like that. Have no opportunity to meet any such testimony. No suggestion of that in the pleading; we object to it.

The Court:

I don't think it has any bearing. I will overrule the objection.

Q. What was your conversation with Mr. Warren about this overtime?

A. I went up to see Mr. Warren. He told me, he said that he had found out he wasn't covered by overtime. Said if he owed us, he would pay us. Said if I owe it, I will pay it, and he refused to pay it. I asked him to pay up there.

The Court:

When was that?

A. I can't recall the date. It was sometime in December.

The Court:

What year?

A. 1940.

The Court:

All right. Take a recess ten minutes.

(11:20 A. M. after recess.)

59 W. M. SLAID, a witness called by the plaintiffs, being first duly sworn, on oath testified as follows:

Direct Examination.

By Mr. Scarborough:

Q. Mr. Slaid, have you ever been employed by the Warren-Bradshaw Drilling Company?

A. Yes, sir.

Q. In what capacity?

A. As driller. Rotary driller.

Q. When was the first work you did for the Warren-Bradshaw Drilling Company?

A. March 11.

Q. What year?

A. 1939.

Q. Mr. Slaid, you were, without going over the testimony of these other men who have already testified, you were the driller on that rotary crew?

A. Yes, sir.

Q. Your duties were as have already been testified?

A. Yes, sir.

Q. Mr. Slaid, how much were you paid for the work that you did?

A. Eleven dollars a day.

Q. Seven dollars a day?

A. Eleven dollars a day.

Q. Was that rate of pay changed regardless of how many hours a week you worked?

A. It wasn't.

Q. In other words you were paid the same rate if you worked twenty hours a week or if you worked 56 hours a week?

A. Yes.

Q. Taking your time, now, please give us the dates and the number of hours you worked for Warren-Bradshaw Drilling Company?

The Court:

You have records, you are taking from a record? You have a statement you are taking that off of?

A. Yes, sir.

Q. How many days?

A. Well, since 1939 it ran up to September 2nd—to the 7th—of 1940.

The Court:

Now, let me suggest, just a matter of getting it in the record. The Court reporter, can be just done better, by giving that record to the Court reporter, and let them cross examine.

(Mr. Scarborough):

Q. You have the original book?

A. No, sir, just have a copy.

Q. Where is the original?

A. I don't have it. I don't have it with me at the present.

Mr. Scarborough:

Your Honor, counsel have been furnished a copy of it.

The Court:

Just give the reporter the copy and identify it.

(The instrument referred to, being a sheet of paper bearing penciled words and figures on both sides was marked for identification "Plaintiff's Exhibit 22; a similar sheet also in pencil headed "Edgar Slaid" was marked for identification, "Plaintiff's Exhibit No. 3"; a similar instrument, typewritten, was marked "Plaintiff's Exhibit 4"; and another similar instrument, written in ink, was marked "Plaintiff's Exhibit No. 5".)

(Mr. Scarborough):

Q. The sheet that you prepared then, truly and correctly represents the time you were paid for and worked for Warren-Bradshaw Drilling Company?

A. Yes, sir.

Q. Mr. Slade, have you a brother by the name of E. G. Slaid?

A. E. P. Slaid.

A. Edgar Slaid?

A. Yes, sir.

Q. He worked for you as a tool dresser?

A. As a rotary helper.

Q. You have a tool dresser on a cable job?

A. Yes, sir.

Q. Your brother worked the same hours you did?

A. Practically, some of the time.

Mr. Settle:

We object to the answer as to the times this man worked as rotary helper.

Q. Did you keep his time?

A. Yes.

Q. The exhibit you offered, does that truly represent the time he worked?

A. Yes, the time he worked for me.

Q. Any other time included on there except the time he worked for you?

A. No, sir.

The Court:

In other words he commenced and quit the same time you did?

A. Yes, sir.

Q. He was paid $6.50 a day?

A. Yes.

Q. As a helper?

A. Yes.

Q. Now, as the driller what connection did you have with the actual operation and direction of the work that was done; in other words who was boss of the job while you were there?

A. Well, we supervise, run, operate it when the boss is not there. We drillers operate the tools, direct the boys what their jobs were, our helpers.

Q. Did Warren Bradshaw have a supervisor, or what you boys call a tool pusher during the time you worked for them?

A. Yes, sir.

Q. What was his name?

A. Mr. Harding was the drilling superintendent. Mr. Fee was the pusher.

Q. Whom did you get your orders from?

A. Both.

Q. When they were not present, who issued the orders as to what was to be done on that drilling rig?

A. I did.

Q. How many men were in your crew?

A. Four helpers and myself, five to make a full crew; five all together.

Q. You were the driller and the boys were these other two men, weren't they?

A. Yes.

Q. And the helpers took their orders from you?

A. Yes

Cross Examination.

By Mr. Sutton:

Q. Mr. Slaid, during all this time you worked as a driller, I believe you said you worked on rotary?

A. Rotary tools, yes, sir.

Q. You never worked on any cable tools during that time?

A. No, I don't recall working on cable tools.

Q. Now, Mr. Slaid, with a rotary, you never use a rotary down to production?

A. You drill down and set the casing.

Q. And those wells you worked on you didn't drill into the oil, did you?

A. No, sir, stopped—

Q. Can't hear you?

A. With a rotary we stopped before the pay.

Q. You stop some feet before the oil producing sand?

A. One occasion we drilled down within five feet of the pay. We go through some gas in some of the wells. In some of the wells drill through some gas but they cut that gas off.

Q. You case the gas off?

A. Yes.

Q. None of that gas you drilled through was produced?

A. Not as I know of.

Q. You stated you cased it off, did you not?

A. The casing went through the gas, yes.

Q. When you speak of casing off the gas you mean casing is set in the hole so that the gas is on the outside of the casing and doesn't go up through the casing, is that right?

A. Correct.

Q. Now, Mr. Slaid, you didn't continuously work every day, one right after another, there were some times when you had one completed, one well, you were paid off for that job, then a few days later started another; that is true, is it not?

A. Yes, it is. We were off between jobs.

Q. Mr. Slaid, when you went to work you agreed to accept eleven dollars a day, or $11.00 a tower, for your work?

A. We didn't have any agreement; they paid that. They told me what the wages were.

Q. You knew what the wages were before you went to work?

A. Yes, knew what the scale was.

Q. Did you ask what the scale was, or did you already know that?

A. I knew.

Q. You knew?

A. I knew what they paid.

Q. Eleven dollars a day for drillers doing the work you were doing?

A. Yes, sir.

Q. You knew you would be required and expected to work seven days a week, did you not?

Mr. Scarborough:

If your Honor please, their intentions, what their intions were, or what they were required to do I don't think would have any bearing on the ultimate issue of liability of the defendants when they have actually violated the provisions of the Act. In other words whether the facts in this case as to their personal feelings wouldn't make any difference if they worked fifty-six hours a week and weren't paid for the overtime. What their intentions were I don't think would have any bearing on their liability under this Act. The question is whether they did or didn't comply with the law.

The Court:

I think I agree with you in the main, but I will overrule the objection.

Q. My question, Mr. Slaid, was, you knew you would be required to work seven days a week?

A. They didn't specify that.

Q. You knew they were working seven days a week?
A. Usually.
Q. What is that?
A. They finish a well when it is started, straight through.
Q. If you didn't know on the first well, you knew it was their custom and practice on these other wells?
A. I knew, yes.
Q. You knew you would receive $77.00 for seven towers, did you not?
A. I didn't get the question?
Q. For a week's work, working seven towers, you received $77.00?
A. That is the scale.
Q. Sir?
A. That is the scale of pay. I knew that was the scale paid.
Q. You knew you would receive $77.00 for fifty-six hours work, is that right? You knew that was what you would get when you went to work, isn't that true?
A. Well, yes.
Q. You went to work on those conditions?
A. I knew that was the scale.
Q. You went to work with knowledge that was what you would receive for fifty-six hours work?
A. Yes, sir.
Q. Mr. Slaid, did you employ the helpers on the well?
A. Well, sometimes we had that privilege to hire our helper.
Q. Did you employ any of these other men that are plaintiffs in this suit?
A. If the tool pusher suggested somebody else to work I would have to allow him to work when he suggested. Tool pusher told me to take out Mr. Morgan and Mr. Hall.
Q. Who, please?
A. When I taken the job he asked me to carry out E. S. Morgan and O. V. Hall. At that time Victor Banks was

the tool pusher. He said, "I have two men been working for me quite a while I wish you would take out." That was the reason.

Q. Did you employ any of these other men?

A. The tool pusher could overrule any man I worked.

Q. Mr. Slaid, my question was, did you at any time employ either of these men who are plaintiffs in this suit?

A. Yes, I employed—

The Court:

He answered that.

Q. You employed Edgar Slaid?

A. Yes.

Q. Did you employ E. S. Morgan.

A. Yes.

Q. Did you employ A. O. Harmon?

A. Mr. Harmon never worked for me, with my crew.

Q. Did you employ J. M. Huddleston?

A. Mr. Huddleston never worked with my crew.

Q. Did you employ J. N. Miller?

A. Mr. Miller never worked with my crew.

Q. Did you employ B. R. Gray?

A. Yes.

Q. Did you employ Kenneth Waler? (Volcamore)

A. Yes, sir.

Q. Mr. Slaid, these men were employed in various capacities in your crew on the rotary rig were they not?

A. I didn't get the question?

Q. They worked on rotary rig?

A. Yes.

Q. At the time you employed any of these men did they ask you what they would receive?

A. Well, I wouldn't recall any of them asking the scale. I don't recall any of them asking the scale.

Q. You went on after these men had been employed, these various ones you went ahead and worked seven days a week, did you not?

A. We were requested to.

Q. I beg pardon?

A. We were requested to stay on the job until completed. That we should work seven days, yes, sir.

Q. They received a certain amount of money for the fifty-six hours work, seven days work, did they not?

A. What was the question?

Q. They received $6.50 or $7.00, whatever rate per tower, for the fifty-six hours work, so much per day?

A. Yes, sir.

Q. And they received a certain amount per week, seven times that amount for a week's work, fifty-six hours?

A. So much a day.

Q. Sir?

A. Paid so much a day.

Q. The mine, though, received for fifty-six hours seven towers, were paid seven towers?

A. That is right.

Q. Would be seven times that amount?

A. Yes, sir.

Q. They understood that, knew that, when they went to work?

A. I presume they did.

Q. Now, Mr. Slaid, this record—you say that is not your original record?

A. No, not my original record. Taken from the original record.

Q. Who made that record?

A. I taken this from the check stubs I got off Warren-Bradshaw. I saved my check stubs, saved this record. And the Railroad Commission had record of it also, and checked the wells, checked at office record too.

Q. Well, then, as I take it, you didn't make that record up at the time you did the work; is that right?

A. This here one, no, sir.

Q. How about the record for your brother Edgar Slaid?

A. Yes, I can verify the record that I have here, that he worked those days.

Q. You handed the Court reporter something on Edgar Slaid that has been identified as Plaintiff's Exhibit 3?

A. Yes.

Q. I will ask you when that record was made, Mr. Slaid?

A. I made up this record, checking over some of the other boys' times last night that was employed by me. Same time I just sketched this out. Went over the time together with Mr. Gray, Mr. Bill Gray.

Q. Then that record of your brother wasn't made at the time?

A. At the time he did the work, no.

Q. That record you have made for your brother was made from what you have checked up, somebody has told you?

A. No, I can verify the days.

Q. I can't hear you?

A. I know he worked the days.

Q. Answer my question, please. I said that record, Plaintiffs' Exhibit 3", is made up from what you investigated, found out, somebody else told you?

A. No, I was there all the days.

Q. Will you please answer my question, Mr. Slaid? My question was, you made that record up from what somebody had told you?

A. We checked over Mr. Gray's record together with the one I had to see if he had left out any of the dates we was in doubts about.

Q. My question just calls for a "yes" or "no" answer, that is: You made out what you have there not from a record you made at the time but from what somebody else has told you?

The Court:

He says in part from his own record. He can't answer that "yes" or "no". He says in part from Gray's record—his own memory, worked same time, quit the same time he did. In other words, the statement of Gray represents your testimony as to the time he worked?

A. Yes, they worked the same days together. That represents some of the time he worked.

The Court:

He can say in part from what somebody told him, if he did, but he can't answer that "yes" or "no".

A. The times I have on the record here I am sure of. I can swear to the time, the date.

The Court:

In other words, I am not meaning you can't ask him if he made up any part from what somebody told him.

A. To my certain knowledge I know he worked these days. I can swear to these days.

(Mr. Sutton):

Q. Just merely from your memory, your recollection at this time, that Mr. Slaid worked the same days that Gray worked?

Mr. Scarborough:

If Your Honor please, the man has testified he knows his brother worked these days. He did talk to Gray about it. He has testified he knows he did work these particular days.

The Court:
I will overrule the objection.

Mr. Scarborough:
Exception.

Q. Mr. Slaid, my question was that the way that you know that Edgar Slaid worked these days is because according to your recollection he worked the same number of days that Gray did?

A. I kept both of their times, all the time. They worked for me. I kept it. I can verify these days.

Q. Mr. Slaid, is that record made from records that you have, part of it, of Edgar Slaid's time?

A. It were.

Q. Sir?

A. It was made from what records we had of his time?

Q. Which is what, please?

A. That he and myself had together and all his time isn't on there, but I can verify the time. He did work these days I have on this record.

Q. Perhaps I misunderstand you. I just don't understand the source of the information that you have got on that sheet. Where did you get that, that sheet marked "Plaintiff's Exhibit 3"?

A. My knowledge that he worked these days.

Q. What is that.

A. My knowledge that he worked these days. I know that he worked these days.

Re-Direct Examination.

By Mr. Scarborough:

Q. Mr. Slaid, they have asked you about men you have employed to work as rotary helpers. Did Warren-Bradshaw Company ever refuse to pay anybody you employed to work as rotary helpers?

A. Yes.

Q. When was that?

A. They refused to pay these additional wages.

Q. Never did refuse to pay them what they were paying everybody?

A. No.

Q. In other words, whenever you employed a man Warren-Radshaw would pay him—pay him something?

A. Yes, sir.

Q. Never did question your authority to hire somebody unless the tool pusher or superintendent were there?

A. That is right.

Q. Now, Mr. Slaid, Mr. Sutton has asked you about men who went to work for you and any agreement about the wage; I will ask you whether or not it is a fact there is a scale which is familiar with the boys that work in the oil fields?

A. Yes, sir.

Q. Now that scale, state whether or not it is a fact that certain employees are paid certain wages for certain jobs of work?

A. Yes.

Q. In other words the scale varies with the type of work done by the guy that is working?

A. That is right.

Q. That being the case when a man was hired for a particular job there was a scale of pay already established for that particular work?

A. That is right.

Q. Now, I asked A. D. Harmon awhile ago about a conversation with Mr. Warren about overtime. Were you present when the conversation with Mr. Warren after this question about overtime came up?

A. Yes, sir.

Q. Relate to the Court what that conversation was?

A. We discussed with Mr. Bradshaw additional—

Mr. Sutton:

Tell that conversation.

A. We went up to his office and told him we wanted the balance of our time. He wanted to know what we meant. We told him we was informed we had additional wages. That was after we got the wages to comply with this overtime.

Q. When did you get the wages to comply with this Act?

A. I don't just remember the date.

Q. Was it sometime in 1941?

A. Well, part of 1940, I believe in January, month of January. Don't remember just what date they cut the wages and the scale of pay for the roughnecks and the drillers. We had wage agreement and the rigs were not operating at that time.

Q. That was January 1941—I mean October, 1940?

A. I believe, I can't give you the accurate date.

Q. Well, what is your best judgment?

A. Just before the end of the year, this last year, in 1940, they sent out word about this new scale, not to work any man who didn't sign this new wage scale. I was one of the drillers. I asked Mr. Harding what about if I have a man sick. He said don't take any man out to work there any time if he hadn't signed the wage scale.

Q. Who is Mr. Harding?

A. He is the drilling superintendent.

Q. For the Warren-Bradshaw Drilling Company?

A. Yes.

Q. When was that conversation about taking a new man out?

A. When I discussed with Mr. Harding on the street.

Q. About what date?

A. I can look on this list. I know when started that list. I don't know whether I have it here, or not. (Looking through papers.)

Q. Just approximately?

A. Must have been in October.

Q. 1940?

A. Yes.

Q. Go ahead?

A. He says, well we can't work any of them unless they sign this new wage agreement. Said that is orders, we have to carry out orders. That is all, the conversation ended.

Q. Did you then go to Tulsa?

A. No, had been there before—no, didn't either. Yes, we went and discussed with Mr. Bradshaw later.

Q. Well, what was the conversation you had with Mr. Bradshaw?

A. We told him we wanted the balance of our money. He said had paid us all up in full. We told him we was informed we had additional wages which come up a year ago, additional wages. Hadn't complied with the law. Said he knew he owed it, was going to send it out.

Q. What excuse did he give you for not paying it then?

Mr. Sutton:

If Your Honor please, I don't see the materiality of such a line of testimony. There is no pleading of any agreement by this defendant to compensate these men upon the basis they are claiming. I don't see the relevancy of such testimony upon any issue in this case.

Mr. Scarborough:

If Your Honor please, there is a penalty involved in this suit. This suit involves a suit for double the amount of overtime, plus attorney's fee. Under these circumstances I think it is necessary to show claim refused. This testimony is offered for that purpose.

The Court:
You mean liquidated damages?

Mr. Scarborough:
Yes.

The Court:
I don't think that is necessary to show. Since they object, I will sustain.

Mr. Scarborough:
Note our exception.

The Court:
We will suspend until 1:45.

(Court reconvened at 1:45 P. M. same day.)

76 O. V. HALL a witness called by plaintiffs, being first duly sworn, on oath testified as follows:

Direct Examination.

By Mr. Scarborough:
Q. Your name is O. V. Hall.
A. Yes, sir.
Q. Mr. Hall, you were working in this crew about which the other boys have already testified?
A. Yes.
Q. In what capacity were you employed?
A. Derrick man.
Q. What were you paid?
A. Seven dollars a day.
Q. Seven dollars a day?
A. Yes, sir.

Q. When did you commence work for that?

A. I was working for Warren-Robinson in 1937; December was when I started to work for them.

Q. Were you working for Warren-Bradshaw Drilling Company in—on October 24, 1938?

A. Yes, sir.

Q. You continued to work for them as covered by that record which you hold in your hand?

A. Yes, sir.

Q. Does that record you have, does that truly and correctly represent the number of days and number of hours worked by you during that period of time?

A. Yes, sir, to the best of my knowledge.

(The instrument in question, Plaintiffs' Exhibit No. 6, marked for identification.)

Q. The work that you did then, is reflected by that sheet has already been testified to and your testimony would be the same?

A. Yes.

Q. Mr. Hall, you say you were a derrick man?

A. Yes, sir.

Cross Examination.

By Mr. Sutton:

Q. Just what does a derrick man do?

A. Well he goes out and gets them pieces rigged up in the derrick. Has to get up in the derrick, land the crown, double brace it, get ready to drill.

Q. In other words, you set up the derrick?

A. No, no, I equip it, the equipment in the derrick. Land the crown, string it up, you know.

Q. During the time of and as the well is drilling what are your duties all that time?

A. Look after the mud pump, see it is running, circulating mud so they can drill.

Q. All this time you are working on rotary rig?

A. Yes.

Q. On none of the wells that you worked on, that you have used a rotary down to the actual oil, have you?

A. Well, in Illinois we did.

Q. I mean on these wells?

The Court:

You don't need to go into that.

Q. Mr. Hall, how many wells did you say you worked on?

A. In the neighborhood of thirty, I judge.

Q. Did you do any of the work tearing down the rigs, moving out?

A. We tore down, didn't move.

Q. You did that on these thirty wells you have testified about?

A. Yes, sir.

Q. Did you also help in rigging up?

A. Yes, sir.

Q. What was your rate of pay?

A. Seven dollars a day.

Q. You worked fifty-six hours a week?

A. Yes, sir.

Q. Seven days a week?

A. Yes, sir.

Q. For that you were paid $49.00; is that right?

A. Yes.

Q. You knew that would be your rate of pay when you went to work?

A. Yes, sir.

Q. Forty-nine dollars for fifty-six hours work?

A. Yes, sir.

Q. You agreed to that?

A. Wasn't any agreement, that was just the wage scale I worked under.

Q. You expected $49.00 for fifty-six hours work and made no complaint at the time?

A. Not at the time, no, sir.

Q. Mr. Hall, you received checks how, monthly?

A. Every fifteen days.

Q. The checks that you received, did these checks properly pay you for the number of hours that you had worked at the basis of seven dollars a day?

Mr. Scarborough:

Just a minute. As to whether or not this man was properly paid is the reason we are here. I think that would be a conclusion that this witness wouldn't be justified in answering.

Mr. Sutton:

My object is to get at the number of days and hours. That is the purpose of the question subject to the objection he is making. I didn't intend it for the purpose of binding him on his claim.

Q. You understood me?

A. What was the question?

Q. My question was, the checks you received from Warren-Bradshaw Drilling Company on the first and fifteenth days, those checks properly paid you for the number of hours you had worked at the rate of seven dollars a day?

A. At the rate of seven dollars a day.

The Court:

Your mean correct payment on the basis of the hours—the computation—there was nothing wrong with the computation.

A. Nothing only just the overtime.

Q. My point, Mr. Hall, you weren't paid for a less number of hours than you worked?

A. At the rate of the scale.

Q. I said at the rate—you had a slip there as to the time worked. What did you make that up from?

A. The hours I worked.

Q. No, you had a slip, you testified it correctly reflected the number of hours you worked?

A. That is it. From the wells and my check stubs.

Q. You have taken that information from the various check stubs?

A. The biggest part of it.

Q. What part didn't you get?

A. Well, didn't issue any stubs a certain length of time. At that time nothing to go by only wells—worked seventeen days on a well, that is the number of days I got in.

Q. Mr. Hall, will you turn there to your record, 1938, from October 24, to 31?

A. Yes, sir.

Q. How many hours work do you show? That you worked?

A. I show fifty-six.

Q. Where did you work during that time?

A. Illinois.

Q. Well, you didn't work here in Gray county?

A. No, that is just the record from the time went into effect. I was in Illinois at the time, working for Warren-Robinson.

Q. All right, what was the number and name of the well you worked on there?

A. I haven't got the number. I have my check stubs.

Q. That is not in the State of Texas?

A. No, that is in Illinois.

Q. Now, November 1st to November 7, where did you work?

Mr. Scarborough:

What year?

Q. 1938?

A. Well, we worked on drilling a well, was kind of a mix-up. I worked six hours on that well. I never did get it straightened out. They put us on six hours, then changed to eight.

Q. The first of November to the seventh of November you show how many hours work?

A. Shows here fifty-six hours. Might be an error in that. I don't recall just exactly myself.

Q. Well, Mr. Hall, if the records of the Warren-Bradshaw Drilling Company show you worked during that period, 1st of November to the 7th of November, 12 hours, would you say that record was incorrect?

A. If what, you say?

Q. If the records of Warren-Bradshaw Drilling Company show you worked only twelve hours, would you say the records were incorrect?

A. No, I wouldn't.

Q. Now, turn to January 1st to 7th, 1939.

A. 1939?

Q. Yes. How many hours do you say you worked during that period?

A. In 1939? I don't seem to show January 1st. January 1st to 8th, 1940—1939—I don't show no list here of 1939. I guess that would show January 1st to 8th, fifty-six hours.

Q. Mr. Hall, where did you work during that time?

A. I was on the Bradshaw.

Q. Beg pardon?

A. On the Bradshaw well.

Q. Where?

A. In Pampa, Gray county.

Q. You couldn't be mistaken about that?

A. I might could. I just have a record of my checks. Could be mistaken. I am no bookkeeper. I didn't keep

time as you do on the well. They taken report on the wells afterwards, some of that stuff. Might not be just correct.

Q. In other words you recognize your statement is not necessarily correct in every detail?

A. That is right.

Q. The records of the Warren-Bradshaw Drilling Company would be more correct than that?

A. I judge be more accurate.

Re-Direct Examination.

By Mr. Scarborough:

Q. You worked for Warren-Bradshaw in Illinois?

A. Yes, sir.

Q. When did you return to Texas from Illinois?

A. I left there the 8th of November—morning of the 9th.

Q. 1940?

A. 1938.

Q. Did you start work again for the Warren-Bradshaw Drilling Company here in Texas?

A. Yes.

Q. What was the first time you worked after you got back to Texas?

A. Well, I worked on the Perry well six hours a day.

Q. What county is that in?

A. That is in Gray county.

Q. Now, the work then that you did in Texas in November, 1938 up until the end of the time covered by your record was all done for the Warren-Bradshaw Drilling Company?

A. Yes, sir.

Q. Now Mr. Sutton has asked you about the job a derrick man does. You have to manipulate that rotary rig and make it work?

A. Have to know what you are doing.

Q. Part of your duties was seeing that that rotary rig continued in operation?

A. That is right.

Q. You also assisted at times in the erection and dismantling of that outfit?

A. Yes, sir.

Q. Mr. Hall, all the wells you worked on, state whether or not they ultimately produced either oil or gas?

A. Yes, sir, practically all of them.

Mr. Settle:

We object to that form of proof unless he shows the witness was personally present.

A. I was present.

Q. You knew whether these wells you worked on produced?

A. Yes, sir.

Q. Did they, or didn't they?

A. They did.

Re-Cross Examination.

By Mr. Sutton:

Q. Mr. Hall, how long a period of time did you work on a six hour shift?

A. We worked out there, I will tell you—worked out there, didn't finish the well. I don't remember how many days. Around ten or twelve days.

Q. Operating at that time four towers a day?

A. Yes, four towers, six hours.

Q. Well, was that—do you know what month of the year that was, please, sir?

A. Yes, it was in December, 1938.

Q. December, 1938?

A. Yes.

Q. You didn't work any six hour shifts after that time?

A. No, sir.

Q. Mr. Hall as a matter of fact you were paid for a full tower's work on a number of occasions when you didn't work a full tower, isn't that right.

A. No, sir.

Q. Did it ever happen you would go on a lease, go out to report for work and for some reason you wouldn't work a full tower?

A. I don't remember.

Q. You wouldn't say that wouldn't happen?

A. That would happen, I guess.

Q. It would happen?

A. I guess so.

Q. Well, you were never paid less than a full tower, were you?

A. No, I never got a half tower. Always full tower.

Q. You received pay for a full tower if you reported out there?

A. We generally worked when we got out there.

Q. My question was you were paid for a full tower's work even if on some occasions you didn't work the full eight hours?

Mr. Scarborough:

If Your Honor please, that is a hypothetical question not based on the facts. He testifies he has no recollection of any time gone out to work not having to work. Basing upon a supposition that isn't evidence in this case.

Mr. Sutton:

I understood his testimony was on some occasions he didn't work a full tower.

Witness:

No, I said possibly you could.

The Court:

Well, ask the question and see if he didn't misunderstand. You mean a substantially less time?

Mr. Sutton:

I mean a substantially less time.

(Mr. Sutton):

Q. Was there any occasion, Mr. Hall, when you reported for work, but didn't work a full tower; I mean full eight hours?

A. Not as I remember.

87 BOB HUFF a witness called by the plaintiffs, being first duly sworn, on oath testified as follows:

Direct Examination.

By Mr. Scarborough:

Mr. Scarborough:

This witness hasn't been sworn.

(The witness was sworn by the Court.)

Q. You name is Bob Huff?

A. Yes, sir.

Q. Do you hold any position with the State of Texas, Mr. Huff?

A. Deputy Supervisor with the Railroad Commission, Pampa.

Q. You are headquartered at Pampa?

A. Yes.

Q. You were subpoenaed to appear as a witness?

A. That is right.

Q. Mr. Huff, of what do your official duties consist?

A. We have supervision of all oil and gas wells for the Panhandle of Texas, proration and production or both.

Q. In your official capacity then you have control of the production and the amounts that can be produced from the wells in your territory?

A. Yes, sir.

Q. Your district includes the district surrounding Pampa of several counties, does it not?

A. Yes, sir.

Q. Mr. Huff, at my request did you examine a copy of what has been introduced as Exhibit 1 in this case, showing some wells that were drilled by the Warren-Bradshaw Drilling Company?

A. Yes, sir.

Q. After seeing this list, list of wells that were drilled in these particular localities, did you then examine your records to determine whether or not any tenders had been issued for these wells?

A. Yes, we checked this list for, I believe it was for Mr. Hall as to the pipe line connections from the list here of approximately twenty wells.

Q. Those wells, Mr. Huff, were producing wells, were they not, that produced oil and gas?

A. Yes, all I believe, except one, were productive of oil.

Q. And the one was a gas well?

A. Yes, I think one Panhandle Eastern well.

Q. Now, Mr. Huff, before oil can be delivered to a pipe line what procedure must be gone through with there in your office?

A. The first form that the producer files is form 1, which is an application to drill the well. In case it is a producer you file what is known as "SW1" which is authorization for the pipe line to gather the oil. After "SW1" has been properly filed we then issue tenders for the movement of the well's allowable.

Q. In other words before a well can be drilled permission has to be obtained through your office for the drilling of that well?

A. Yes, sir.

Q. You pass on the closeness that it is to some other well, and several other requirements you have before you grant a permit?

A. Yes, we have a regular location hearing we hold in Austin on these leases.

Q. First, before any well can be drilled in this locality and in the surrounding counties permission must be obtained from your office?

A. That is right. After permission before the oil and gas can be delivered to the pipe line permission must again be obtained.

Q. In issuing that tender you take into consideration the amount of the allowable?

A. We tender the lease alloable by months.

Q. Now in checking your records from the wells which are listed on this list you have they all produced oil with the exception of one which you testified was a gasser?

A. That is right.

Q. What do your records show with respect to whom that oil and gas was delivered? Let me put it this way: Does it show the oil or gas was delivered to a pipe line?

A. Yes, sir, each one of these well have pipe line connections.

Q. And the tender is then, given by the producer to the pipe line company which then received the oil?

A. That is correct.

Q. After the oil and gas, oil in all cases except one, is delivered to the pipe line, that oil is then carried where, what do they do with it?

A. Well, I think I have about thirteen of these—

Mr. Settle:

I am not very familiar with this. I don't want to be too technical. I object as incompetent, irrelevant, immaterial to prove any issue in this case, not the best evidence, apparently calls for the conclusion of the witness.

The Court:

I will hear you on this.

Mr. Scarborough:

It is on the Interstate Commerce feature of this case. To show this oil moves in commerce. This witness is qualified to the extent he is appointed by the State of Texas for this particular purpose. It is his business to know, does know, this oil moves in Interstate Commerce.

The Court:

Do you know that actually, or just as a matter of common knowledge?

A. Well, where issue tender, crude that goes out of the State, this tender we approve authorizes movement too. Like, say, Sinclair to Oklahoma. We know that oil is moved out of the State. As far as what is done with it after it gets out of the State, I can't testify. It might come back in Texas, or might go elsewhere. Same would be true of Standish or Humble or any of these pipelines.

The Court:

I will overrule the objection.

(Witness):

A. The crude is delivered to refineries.

Q. What I am getting at, maybe can simplify by this question: Does that oil move in Interstate Commerce?

A. Some cases. I mentioned Sinclair case for instance. I know that crude goes out of the State because we sign a tender for the crude to go out of the State.

The Court:

You had better continue on the line you have begun previously. He doesn't know actually whether it goes out of the State only under certain circumstances. In all circumstances, you can bring that out.

(Witness):

A. Just when they sign a tender they swear it was moved. That is all we can swear to.

The Court:

Ask him what he knows.

Q. Give us what you do know about the moving of this oil in Interstate Commerce?

A. I believe it would be better for you to name the company. You have four or five different situations.

Q. What is the situation with respect to the Humble?

A. The Humble's crude is tendered to their pipe line to Bay City, Texas.

The Court:

In other words piped from the lease to their pipe lines that go to Bay City, Texas.

Q. You know they have a big refinery at Bay City?

A. Yes, sir. What goes with that lube and gasoline and by-products from there would be hearsay as far as I could testify. Might go to New York, and might go to Texas.

Q. In your business you don't keep up the percentage of crude that goes in the pipe line that is manufactured into other products?

A. We would know, if manufactured into other products, but wouldn't know what percentage went out of the State, or even foreign countries.

Q. You do know the Humble's products are delivered to Humble's refinery, in Bay City?

A. That is right.

Q. Which manufactures the by-products from the crude delivered to the pipe line here?

A. That is right.

Q. What is the situation with respect to the Standish?

A. The Standish delivers all their crude, in fact I think the Standish and Phillips are the same corporation, to the refinery at Phillips, Texas. Their products are piped, some of their gasoline is piped out of here, to, I think, Missouri, St. Louis, and Kansas City, and others we sign manifest to move gasoline by truck to New Mexico, Oklahoma, and Colorado, for the Standish. I'd say that fifteen or twenty per cent. of their products was sold in the Panhandle and the three States I named. Possibly another fifty to sixty per cent. goes another pipe line.

Q. Where does the pipe line carry it?

A. I think its main terminal is St. Louis, Missouri.

Q. All right, what about Magnolia?

A. Magnolia's line goes over here to appoint between Port Arthur and Beaumont. They have a refinery there in Texas. Their products, well you know as well as I do after refined, I guess, to every place. That is as far as we have jurisdiction.

Q. What about Danciger?

A. Danciger, I'd say—(interruption.)

Mr. Settle:

If your Honor please, I believe this witness has testified all right from what he knows; I am afraid he is just drawing on his common knowledge, unless testifying to manifests, tenders.

The Court:

He has somewhat, at that, in connection with where that stuff goes.

Mr. Scarborough:

That is true, Your Honor, but he as to what his duties are, he can testify as to that and what he knows has tenders for, manifests for.

The Court:

I will overrule the objection.

A. Danciger, we sign manifests of movements of any products of crude that are moved by truck, are moved by authority of manifests issued by our office. These manifests show the place the shipment is received by the truck and the place of destination. Danciger moves a substantial amount to New Mexico, Colorado and Oklahoma. In the Panhandle similar to Phillips and each Texas company.

The Court:

Any of it in original form, or after it is manufactured?

A. All of Danciger's is products, by-products of crude. They don't sell any crude themselves.

The Court:

Any pipe line?

A. No, sir, don't have any pipeline. They sell their fuel oil and part of their gasoline by tank cars which are moved by train.

(Mr. Scarborough):

Q. That covers all of the pipe line companies you have given tenders to on these wells now except one, with the exception of the gas?

A. Yes, sir.

Q. What is the situation with respect to the gas; what is done with the gas from these wells that produce gas?

A. The only gas well I see on this list is Panhandle Sneed. I guess that is it and 24 Panhandle Eastern Line

goes East. I think that their probable purchaser is Detroit and Indianapolis.

Q. That is outside of the State of Texas.

A. Yes, sir.

Q. In other words the gas is delivered from the well to the pipeline?

A. Yes.

Q. The pipe line then runs on to Detroit and Indianapolis? These and other points?

A. Yes, sir.

Q. Now, Mr. Huff, if there are changes made in these wells or any change in the proration, or if it becomes necessary to plug them so they can't produce any more, or when they don't produce any more, that has to come through your office?

A. Yes, sir, that is an application to plug.

Q. Permission has to be obtained to either change the allowable rate or to plug the wells?

A. Yes, sir, to plug a well is practically the same procedure as the drilling.

Q. Have you been down there in Baytown yourself?

A. I haven't been down there on official duties, but I know where the refinery is.

Q. You have been down there unofficially?

A. Yes, and I wouldn't want to testify anything in this lawsuit about that.

Q. Only thing I wanted to ask you to testify to is whether you have seen freighters loaded at the refinery?

A. I wouldn't know whether taking products, things like that.

Q. I would like to know whether you saw boats being loaded with these products; you can testify to that?

A. Yes, sir, I have seen tankers and long lines of tank cars. I can't swear as to what they were putting in them.

Mr. Scarborough:

May this witness be excused?

Witness:

As to testifying about these pipe line connections. Did you want that? That is what I thought I was coming over here for?

(Mr. Scarborough):

Q. This list that we have which is Exhibit 1 reflects the wells that these seven plaintiffs in this case worked on. Have pipe line connections been accepted by the Railroad Commission on these wells that are so listed?

A. Yes, sir, these lists are prepared in our office, I am pretty sure, and these are the connections. That lady in our office listed by the side of each well.

Q. In other words the wells listed on Exhibit 1 are now connected to pipe line and the wells listed on Exhibit 1 the products flow into pipe lines?

A. That is correct.

Q. Facts you have already testified to as to where the pipe lines go, are true as to these particular wells?

A. That is true. The connection is listed opposite each well on the exhibit 1.

Cross Examination.

By Mr. Sutton:

Q. Did you make that examination of these records yourself?

A. These are made by my secretary, Mrs. Louder.

Q. Did you check her work?

A. Well, I can testify as to this from my own knowledge, Bill.

Q. Beg pardon?

A. I can testify to this of my own knowledge, those connections on that list.

The Court:

You mean you can verify the correctness of it from personal knowledge?

A. Yes, I can verify the connections from personal knowledge, and tenders I have each month. Does that answer your question?

Q. My question was did you check the list she had made against the records of your office?

A. No, sir, I didn't check that. I don't re-check any of her work. She brought this in, under my direction she placed the connection opposite each well. We didn't know what it was all about. This testifying is out of our line.

Re-Direct Examination.

By Mr. Scarborough:

Q. Your testimony, is that correct?

A. Yes, I would say that is correct.

(Witness excused.)

97 R. E. S. MORGAN, a witness called by the plaintiff, testified as follows, being first duly sworn:

Direct Examination.

By Mr. Scarborough:

Q. Your name is E. S. Morgan?

A. Yes, sir.

Q. Where do you live, Mr. Morgan?

A. Pampa, Texas.

Q. Are you another one of this rotary crew?

A. Yes, sir.

Q. When did you go to work for the Warren-Bradshaw Drilling Company?

A. When Warren Bradshaw started was in 1939; it was Warren-Robinson then.

Q. When did you change over and start to work?

A. When Mr. Bradshaw bought in the first of thirty-one.

Q. You started to work then?

A. I had been working before then.

Q. Do you have a list of the time worked by you?

A. Yes, as near as I know—best of my knowledge.

(At this point an instrument in typewriting, bearing witness's name at top was marked for identification Plaintiff's Exhibit No. 7.)

Q. Mr. Morgan, what kind of work did you do?

A. Fireman.

Q. What was your rate of pay?

A. Seven dollars a day.

Q. You were paid that regardless of how many hours per week you worked?

A. Yes, sir, never paid time and a half. Supposed to be getting $7.00 per day, so many hours per week and time and a half overtime. Never have paid it.

Q. Did you ask Mr. Bradshaw to pay it?

A. Certainly did.

Q. What if anything did he say?

Mr. Settle:

We shall object to that line of testimony, not set out in the pleadings. We were given no notice of any complaint.

The Court:

I don't think it is material.

Mr. Scarborough:

May I make this observation. The sole purpose for which we are offering this witness' testimony on this, these witnesses have already been asked if they complained about this money they were paid, if that is what they understood they were to be paid, if that was the scale of pay.

The Court:

You are talking about a conversation that occurred after the work was done?

Mr. Scarborough:

Yes, sir, I want to show (interrupted).

The Court:

What you want to show it for?

Mr. Scarborough:

To show the attitude.

The Court:

I mean in the face of their objection?

Mr. Scarborough:

For the purpose of counteracting the testimony they have sought to elicit, that they were satisfied with the pay they received under the scale. They have apparently put it on the proposition that is all they were entitled to. If paid that, they were through. I want to show this conversation they had with Mr. Bradshaw that he realized he was under the Act, that he told this man he was going to pay it.

The Court:

In other words it is in the nature of showing demand prior to filing suit?

Mr. Scarborough:
Yes, sir.

The Court:
What is your objection?

Mr. Settle:
I take it from what counsel said he might prove an admission by somebody connected with defendant. There is no claim of adequate pleadings; we don't think they are entitled to show that. We are entitled to meet that; that is what counsel said he expected to prove, an admission by somebody connected with defendant.

Mr. Scarborough:
I understand don't have to plead admission. That would be evidential. They prove each one got all he expected to get.

Mr. Settle:
Now, I take it from counsel's statement he proposed to prove by a statement since the work was done that somebody connected with defendant admit liability for more. That would be just a matter of considering the law, anyway. Might be in the form of a compromise, anyway; might be.

The Court:
If it is offered for that purpose?

Mr. Scarborough:
No proof of offer for any compromise.

The Court:
I believe I will change my ruling. We don't know what the Supreme Court may ultimately hold as to such demands being made affecting whatever is a penalty under

the statute. Supposed to be liquidated damages. Certainly doesn't hurt you in any way. Nothing more than what the question purports to be. I believe I will change my ruling. I overrule the objection.

Mr. Settle:
Exception.

(Mr. Scarborough):
Q. All right, give us the conversation you had with Mr. Bradshaw?

A. We were informed by Mr. J. R. Street, also employed by the Government of the United States to go to the office of Warren-Bradshaw Company, at Tulsa, and consult them as to our back overtime which they hadn't paid. We went up to Tulsa the first day of December, 1940 to Warren-Bradshaw's office, Monday morning the 2nd day of December. When we told them our purpose, wasn't anyone in except Mr. Bradshaw. He said they didn't come within the law. So after Monday, Mr. Hall and Mr. Slaid had been to see Mr. J. R. Street, and he said why don't you file a claim in our office. We told him we were taking the proper steps before starting anything. Government passed the law, says owe it. Mr. Street says owe it. Mr. Bradshaw said he knew they owed it and would pay it. That at that time they were having the books audited, would get to us later. At that time figuring up the back time. Said to give them at least ten days before any action taken. We went and did everything, they haven't done anything.

Q. Warren-Bradshaw have their principal office where?

A. Tulsa, Oklahoma.

Q. Where else do they operate besides Oklahoma?

A. Illinois, Nebraska, Texas, Kentucky, I believe. I believe some of the boys working in Texas worked in Illinois.

Q. Now, this conversation you had was long prior to the time any suit was filed—before?

A. Yes, Mr. J. R. Street advised our men had, as a group, we had to have a spokesman. Mr. O. V. Hall was elected. As contact man for Tulsa.

Q. You and Mr. Hall and who else went to Tulsa?

A. Mr. Hall, Mr. Harmon, Jim Huddleston, Mr. Slaid. We were the five, were in the office, heard the conversation. He told us would pay it, knew they owed it. Never did pay it.

Cross Examination.

By Mr. Sutton:

Q. You worked as a fireman, I believe you said?

A. Yes, sir.

Q. You worked at all times on the rotary rig?

A. Yes, sir.

Q. You also assisted in rigging up and tearing down the rig?

A. Yes, sir.

Q. How many wells did you work on during the time you worked?

A. To the best of my knowledge since January 1, 1939 up until September in 1940, was thirty-two wells. To the best of my knowledge. Could be more, could be less. Would rather think less.

Q. Mr. Morgan, did you make any record there of the time you worked?

A. Well, I have it here taken from the check stubs. Only thing we have to check from because Warren Bradshaw always pick up the time books.

Q. You didn't make a record of it at the time?

A. I beg pardon?

Q. You didn't make a record of it at the time?

A. No, couldn't because they pick up the time book and take it away.

Q. I mean you didn't from time to time make records of the number of hours you worked?

A. Not right on the date. Have a check stub record.

Q. You received checks bi-monthly?

A. Every fifteen days unless late.

Q. These checks were correct as to the number of hours, were they not?

A. Not paid correctly, no, sir. Supposed to work 44, 48 hours, so much an hour, time and a half overtime.

Q. I am not asking you about the amount in dollars and cents. I am asking you about the number of hours. Nothing wrong with the checks as to the number of hours worked?

A. About the hours worked, was fifty-six hours. Supposed to be 87½ cents an hour for so many hours then time and a half overtime.

The Court:

Don't argue. He has given that.

Q. Assuming that what they were doing was legal, all you were entitled to, were you correctly paid?

A. According to the Wages and Hours, we were doing that many before the Wage and Hour law went into effect.

The Court:

Nobody asked you that question.

Mr. Sutton:

Your Honor, I want to find out whether this man is disputing whether Warren Bradshaw paid for the correct number of hours.

The Court:

Nobody contends they did not.

Mr. Scarborough:

I think I can stipulate with counsel now, will do so, that if the wage and hour law hadn't been in effect these men received every dollar they were entitled. As to this witness and every other.

Mr. Sutton:

That will be sufficient.

Re-Direct Examination.

By Mr. Scarborough:

Q. Now, he has asked you about keeping time day by day. You can correctly determine the time, correctly determine from the check stubs exactly the number of hours you worked?

The Court:

Anybody knows if it had so much a day, could tell—so much an hour or day, it could be figured from the check stubs as well as from the checks.

(Witness excused.)

105 MR. J. R. MILLER, a witness called by the plaintiffs, being first duly sworn, on oath testified as follows:

Direct Examination.

By Mr. Scarborough:

Q. Your name is J. R. Miller?

A. J. R. Miller.

Q. Have you ever worked for the Warren-Bradshaw Drilling Company?

A. Yes, sir.

Q. When did you go to work for them?
A. 13th day of December, 1939.
Q. What was your job?
A. I went to work for them as a fireman, first.
Q. How much did they pay you for that work?
A. Seven dollars a day.
Q. When did you change?
A. It was in the first half of April.
Q. What year?
A. As near as I remember, 1940.
Q. What did you start doing?
A. Drilling.
Q. What did they pay you for that?
A. Eleven dollars a day.
Q. Do you have a record of the hours and weeks worked by you?
A. I have a record of the days worked. Didn't give us any record of the hours. I have a record of every check Warren-Bradshaw Company issued to me.
Q. Does that truly and correctly represent the number of days you worked?
A. Yes, sir.

The Court:
Let me see one of these stubs. (Witness hands to the Court.)

Q. In other words can your time be determined from these check stubs?
A. Yes, as to the number of towers work by me at $7.00 and at $11.00, yes, sir, can be determined.
Q. The number of hours each half month, each fifteen days?
A. That is correct.
Q. You didn't make up a separate book?
A. No, sir, these checks of Warren Bradshaw were handed to me each pay day.

(Fifteen separate voucher stubs marked for identification under one Exhibit number as Exhibit No. 8—Plaintiffs'.)

(Witness excused.)

107 MR. J. M. HUDDLESTON, a witness called by the plaintiffs, being first duly sworn, on oath testified as follows:

Direct Examination.

By Mr. Scarborough:

Q. Your name is what?

A. J. M. Huddleston.

Q. Did you ever work for the Warren Bradshaw Drilling Company?

A. Yes, sir.

Q. Have you got a list there showing the hours and days worked?

A. Yes, sir.

(The list in question was marked for identification Plaintiffs Exhibit No. 9.)

Q. Is that true and correct?

A. Yes, sir.

Q. What did you go to work doing?

A. Rough necking.

Q. Is that the kind of work you did the entire time you worked for them?

A. Yes, sir.

Q. How much were you paid for that?

A. Six and a half a day.

Mr. Scarborough:

Take the witness.

Cross Examination.

By Mr. Sutton:

Q. What is this marked exhibit 9?

A. That is the time.

Q. Who kept that?

A. I got it from the stubs of Warren-Bradshaw that they gave me.

Q. You took that off the stubs, you say?

A. Yes, sir.

Q. Do you have these check vouchers?

A. I have at home.

Q. You don't have these vouchers, but you have at home?

A. Yes, sir.

Q. You say you just took off the vouchers attached to the checks that were paid you for wages?

A. Yes, sir.

Q. This is all the record you have, just these vouchers?

A. Yes, sir.

Q. Do you have any of the vouchers with you at all?

A. No, sir, I don't have.

(Witness excused.)

Mr. Scarborough:

This is everyone except my soldier. I will get my soldier—if you have no objection to offering the soldier's sheet. He was paid $6.50 a day.

The Court:

We will decide about that later.

Mr. Scarborough:

Well, I am through with the exception of the soldier, and with the exception of the ultimate goal of the

products that moved in these pipe lines. I didn't anticipate this turn of events.

The Court:

Why don't you stipulate to go by their book as to the soldier?

Mr. Scarborough:

Will you all be willing to settle according to your books? I am sure Your Honor will be satisfied I didn't anticipate this turn the case has taken about the ultimate goal of the oil and gas that was placed in the pipe line. The testimony has showed, I think that the oil was taken from these wells and put into pipe lines and moved to Baytown and other places, but I am not convinced yet that my proof is sufficient to show that the oil got into pipe lines ultimately moved in Interstate Commerce. I think I can procure that testimony from officials of the Humble Pipe Line Company and from these other companies that the railroad commission man testified to, Standish, Magnolia, Sinclair, but I am not in position at this time to make that proof. As I say, I didn't anticipate it. With that exception, I am through. I would like to, in the morning, to make that proof.

The Court:

Doesn't the Bureau of Mines official publications cover all these things?

Mr. Scarborough:

What, Your Honor?

The Court:

The percentage of stuff that goes to the Humble line that goes in Interstate Commerce—percentage that goes intra state.

Mr. Scarborough:

My understanding more than 90% moves in Interstate Commerce. I'd want to get it in evidence.

The Court:

I'd like to get through with the evidence this afternoon, anyway. See what you can do about it.

Mr. Scarborough:

With that exception, I am through. In other words, other features of the case, I have nothing further to offer. On the further question of interstate character of the oil and gas and to prove it ultimately passes the State line, as I say with that exception, I am through with my proof.

Mr. Sutton:

May we have just a few minutes?

The Court:

Take a recess for ten minutes.

(After recess.)

Mr. Scarborough:

Your Honor, before we proceed with this other, I don't know whether there is any question about it, but I want now to offer all these exhibits, which includes these men's time.

Mr. Sutton:

We object to that as incompetent, irrelevant, immaterial, not being sufficiently identified, not showing records sufficiently kept to constitute evidence.

The Court:

Overrule.

Mr. Sutton:
Exception.

Mr. Scarborough:
In addition to that stipulation, we have a stipulation covering reasonable attorney's fee in this case. We have agreed that if there were an attorney brought here to testify that attorney would testify that in the case, the present case, in the situation as it now exists, reasonable attorney's fees for representing the plaintiffs would be the sum of five hundred dollars.

Mr. Sutton:
By that stipulation it is not stipulated that there is any liability on the part of defendants.

The Court:
I understand.

Mr. Scarborough:
Your Honor, too, in addition to what we have already agreed upon, the plaintiff now offers six canceled checks issued to Kenneth R. Valgamore. He is the soldier.

(The six checks referred to were marked as one exhibit, "Plaintiff's Exhibit No. 10.)

(Plaintiff's Exhibit No. 10 introduced in evidence.)

Mr. Settle:
If the Court please, if I understand, the plaintiff has rested?

The Court:
Except there might be something, some further proof on the interstate character.

Mr. Settle:

Comes now the defendant, at the close of the testimony offered by the plaintiff, and demurs to the evidence of the plaintiff, and moves the Court to enter judgment for the defendant on the grounds that the evidence introduced is wholly insufficient to constitute any rights of recovery under the evidence and pleadings in favor of the plaintiffs or either of them against defendant.

The Court:

I will overrule your motion.

Mr. Settle:

Defendant excepts. If the Court please, we rest.

Mr. Scarborough:

If I understand it, I may have until the morning to offer this statement about the interstate character of shipments?

The Court:

Yes, but assuming that, you might as well argue the case—argue the motion for judgment.

(Argument proceeded before the Court.)

(Tuesday, July 8, 1941.)

Mr. Scarborough:

Judge, the proposition of this interstate character of the oil that was delivered to the Humble Pipe Line Company I had anticipated I would be able to make that proof by the pipe line superintendent who lives at Pampa. I got in touch with him last night again. He didn't change his testimony, but he refused to follow the line that we had previously discussed; said that my client either misunderstood them or he misunderstood him. I am not in

position to make that proof. I don't want to close this case without making that proof. It is a matter of evidence easily proved. I want to make this suggestion. I have prepared interrogatories for two witnesses, one an employee of the pipe line company, another the Comptroller of the State of Texas. Of course in the St. John case that was the method of proving. I haven't been as diligent as I should have been—through this superintendent of the pipe line company, I didn't anticipate any controversy. I would like to ask the Court's indulgence to this extent. As I say, this is a simple matter, all of us know these are facts. Counsel for defendant says he doesn't know and doesn't want to stipulate. I would like to ask the Court to leave that particular phase of the case open until I can take these two depositions, if he will. If the defendant will waive cross I can get it back within a few days. Probably necessitate a trip to Austin and Houston.

The Court:

What about setting it down for a day next week, latter part of the week?

Mr. Scarborough:

That would give me ample time. I would deeply appreciate it.

Mr. Settle:

If it please the Court, I don't know what development this would make. I have in mind it might be developed we might want to take cross interrogatories or even take other depositions. I feel we ought to have more time, pass to a later date so as to have an opportunity to meet whatever may arise.

The Court:

You are not certain—I'd rather not put it off on that account. I can set it for Friday of next week, then you can take it up with me or Mr. Scarborough. As far as Humble is concerned, the depositions as taken in the St. John case, I think there will be no controversy about that. I will set it for Friday, the 18th.

(Upon Friday, July 18, 1941, at 10:00 o'clock A. M. the same parties appeared, and the Court again took up the case.)

The Court:

All right, are you ready?

Mr. Scarborough:

Yes, Your Honor.

The Court:

Have you got it in the form of depositions?

Mr. Scarborough:

Yes, sir. The plaintiffs offer first the depositions of Harry W. Ferguson, taken under agreement by counsel.

115 Direct Interrogatories propounded to the witness HARRY W. FERGUSON.

Agreement.

The parties to the above entitled and numbered cause through their attorneys of record, agree that the deposition of the witness Harry W. Ferguson, who resides in Houston, Harris County, Texas, may be taken upon the original and cross interrogatories attached, by any office

thereunto authorized under the law at any time and place where the witness may be found.

It is further agreed that all formalities with respect to the taking of said deposition are hereby waived and that when the answers have been secured to the questions hereto attached, said testimony may be introduced is the trial of this cause subject only to the objections which might be made if the witness were present and testifying.

It is further agreed that all formalities with respect to returning this deposition into Court are hereby expressly waived and the same may be returned into Court in a plain envelope.

The Court:
All right, are you ready?

Mr. Scarborough:
Yes, Your Honor.

The Court:
Have you got it in the form of depositions?

Mr. Scarborough:
Yes, sir. The plaintiff offer first the depositions of Harry W. Ferguson, taken under agreement of counsel:

Interrogatory No. 1. Please state your name, residence, and by whom you are employed?

Answer: My name is Harry W. Ferguson; my residence is 1923 Olympia Drive, Houston; I am employed by the Humble Oil and Refining Company.

Interrogatory No. 2. If you have stated that you are employed by the Humble Pipe Line Company then please state how long you have been so employed?

Answer: As stated under Interrogatory No. 1, I am employed by the Humble Oil & Refining Company and have been in its employ for seventeen (17) years.

Interrogatory No. 3. In the case now on trial, it has developed that some oil produced in Moore, Hutchinson, Gray and Carson Counties and that his oil was delivered to Humble Pipe Line Company. Bearing in mind the above facts, please state where the Humble Pipe Line Company delivers the oil that is picked up in the above fields?

Answer: For the past—

Mr. Settle:

The defendant would like to object to the pertinency, materiality and revelance of that question and the answer given on the ground it is not sufficiently shown the witness' qualifications, fitness, to answer, and on the grounds it calls for hearsay testimony and the answer of the witness shows it is hearsay testimony.

The Court:

Read the testimony.

Mr. Scarborough:

In the case now on trial, it has developed that some oil produced in Moore, Hutchinson, Gray and Carson Counties and that this oil was delivered to Humble Pipe Line Company, bearing in mind the above facts, please state where the Humble Pipe Line Company delivers the oil that is picked up in the above fields?

The Court:

Overrule the objection.

Mr. Settle:

To save time bothering the Court, would it be agreeable to have the record show we have the same objection to each of the following questions and answers?

The Court:

Yes.

Answer (to Interrogatory No. 3). For the past year or more, the entire quantity of crude picked up by the Humble Pipe Line Company from the above fields has been delivered to the Bayton refinery of the Humble Oil and Refining Company.

Interrogatory No. 4. If you have stated in reply to the above interrogatory that the said pipe line delivered this oil to the refinery at Bay Town, then please state what is then done with the oil as briefly as you can?

Answer: The crude oil referred to in the above Interrogatory No. 3 is processed at the Baytown refinery of the Humble Oil & Refining Company for gasoline refined oil, gas oil, fuel oil and other miscellaneous products as may be required from operations of said refinery.

Interrogatory No. 5: After the oil is delivered by the pipe line to the refinery at Bay Town, then please state the percentage of the oil, either in its crude or refined state that is then shipped either by boat, rail, truck or any other conveyance out of the State of Texas, from October 24, 1938 until January 1, 1941?

Answer: Approximately ninety (90%) to ninety-five (95%) of the crude in the form of refined products was moved out of the state during the period of October 24, 1938 to January 1, 1941. Essentially all of this was moved by boat.

Interrogatory No. 6. Please state whether or not it is a fact that more than 90% of the oil that is delivered in Bay town by the Humble Pipe Line Company either in its crude or refined state is then shipped outside of the State of Texas?

Answer: It is a fact that more than ninety (90%) per cent of the oil which is delivered to the Baytown refinery by the Humble Pipe Line Company is shipped out of the state of Texas either as crude or in the refined state.

Interrogatory No. 7. If you have answered in the above interrogatory that that is not true, then please give us the approximate percentage that does move out of Texas?

Answer: No answer is necessary.

Mr. Scarborough:

The plaintiffs now offer the deposition of George Sheppard, which was also taken under agreement by counsel.

Mr. Settle:

Will it be agreeable for the same reasons as before stated to have the same objections for the same reasons.

The Court:

I don't know. This other man sounded like a witness telling what he knew, the facts he knew. I don't know how this will be.

Mr. Settle:

Your Honor would rather wait and pass on it.

119 (Deposition of GEORGE SHEPPARD as read in evidence by Mr. Scarborough):

Interrogatory No. 1. Please state your name, residence, and the position you occupy with the State of Texas?

Answer: Geo. R. Sheppard, Comptroller of Public Accounts, State of Texas, Official Residence, Austin, Texas.

Interrogatory No. 2. Please state whether or not you in your official capacity have anything to do with the collection of the gasoline tax for the State of Texas.

Answer: Yes. The motor fuel or gasoline tax is collected by the Comptroller's Department under my supervision.

Interrogatory No. 3. Please state whether or not in your official capacity you have anything to do with the collection of a tax from the Humble Oil & Refining, or from the Humble Pipe Line Company?

Answer: I collect the tax on intrastate sales of motor fuel (gasoline) made by the Humble Oil and Refining Company. The Humble Pipe Line Company has not paid any tax on motor fuel (gasoline) sales.

Interrogatory No. 4. Please state whether or not a different tax is collected from the major oil companies on its products that are sold in the State of Texas and on its products that are sold outside of the State of Texas?

Answer: The Motor Fuel Tax Law of Taxes levies a tax at the rate of four (4) cents per gallon upon the first sale, distribution or use of motor fuel (gasoline) in this State. There is no occupation or excise tax imposed on the sale of motor fuel (gasoline) when sold and delivered outside of Texas.

Interrogatory No. 5. Please state whether or not a record is kept in your office of the products of the Humble Oil and Refining Company or the Humble Pipe Line Company that are sold outside of the State of Texas with particular reference to the plant operated at Bay Town?

Answer: The monthly report filed by the distributor, Humble Oil and Refining Company, on the 20th day of each month, for the preceding calendar month, shows the total gallons of motor fuel (gasoline) sold in export,

interstate commerce, intrastate commerce, and sales to the Federal Government. The Humble Pipe Line Company have not reported any sales of motor fuel or gasoline.

Interrogatory No. 6. Please state what your records show with respect to the amount of products of said company since October 24, 1938 that are sold outside of the State of Texas. Please give the percentage if any?

Mr. Settle:

Pardon me. If the Court please, since we have reached this point in the reading of the deposition, the defendant would like to object to the competency, relevancy, and materiality on the ground it shows to be hearsay, not the best evidence, not related to the issues involved here. Would like for that to apply to the last previous question and the last questions read by counsel.

The Court:

Of course, what you say is true as to res gestae, but I assume there was some statute of Texas that relieved it of the character or at least if it was hearsay it was admissible. I overrule the objection.

Mr. Settle:

Exception. If the Court desires it, we will make separately?

The Court:

No, it will be all right.

Mr. Settle:

The objection goes to question 5 and 6?

The Court:

Yes.

Answer (to direct interrogatory 6): The monthly reports filed by the Humble Oil and Refining Company shows sales of motor fuel (gasoline) for the period October 1, 1938 to May 31, 1941, both dates inclusive as follows:

(See Schedule below.)

(Schedule as shown below is copied herein, but was not read to the Court, counsel making the following statement):

Mr. Scarborough:
If the Court will then permit me, I will not read all these figures, but will offer without reading.

The Court:
All right.

(The portion of the answer consisting of figures, etc., not read but offered as above follows):

	Government Sales	Interstate Sales	Export Sales	Used & Sold Intrastate
Oct. 1938	312,430	53,938,513	18,046,872	7,955,138
Nov.	470,096	57,365,853	26,642,861	7,934,100
Dec.	976,724	52,684,975	21,151,998	7,528,685
Jan. 1939	649,053	45,762,572	16,718,019	7,441,929
Feb.	1,122,958	49,750,571	8,345,236	6,962,081
March	755,374	66,766,157	14,767,036	8,268,292
April	591,132	22,751,315	24,883,197	7,772,756
May	1,003,242	47,633,167	22,678,431	8,077,276
June	636,183	50,175,411	33,480,610	8,159,677
July	331,232	41,987,867	27,201,890	8,469,120
Aug.	433,275	53,732,702	24,498,403	8,541,368
Sep.	414,798	40,998,649	18,499,511	7,997,461

	Government Sales	Interstate Sales	Export Sales	Used & Sold Intrastate
Oct.	458,448	60,957,210	17,963,061	8,093,666
Nov.	546,901	38,718,400	9,017,609	7,577,591
Dec.	618,215	61,986,332	36,538	8,111,565
Jan. 1940	691,058	38,218,215	8,148,526	7,425,480
Feb.	591,117	32,374,653	2,598,415	7,292,495
March	1,364,127	77,589,117	4,603,019	8,423,565
April	796,787	79,900,861	612,430	7,844,167
May	874,393	75,116,340	4,249,593	7,614,783
June	727,787	61,891,510	300,258	7,676,318
July	960,117	81,673,571	2,854,379	8,127,691
Aug.	1,372,550	65,635,116	2,663,902	8,262,454
Sept.	1,093,806	71,206,895	1,795	8,623,904
Oct.	1,181,197	66,610,983	.....	8,594,950
Nov.	853,806	67,000,799	5,355,518	8,230,948
Dec.	1,035,855	68,574,237	1,924,936	8,166,332
Jan. 1941	1,320,378	78,508,579	3,750,365	8,542,840
Feb.	1,362,745	64,346,445	4,686,096	7,886,997
March	1,339,691	65,365,233	7,090,231	8,712,963
April	1,302,631	74,122,593	3,275,369	9,198,757
May	1,313,956	105,177,892	6,833,830	9,758,859
	27,502,062	1,918,522,732	343,929,134	259,174,208

I cannot testify as to the quantities sold during any part of a month as the monthly reports filed by distributors report the total sales for the entire month.

The motor fuel (gasoline) sold by the Humble Oil and Refining Company of Texas in interstate commerce is 75.22 per cent of the company's total sales of motor fuel for such period. The Humble Oil and Refining Company do not report sales from their Baytown plant separately from their other plants.

(End of Deposition of George Sheppard.)

Mr. Scarborough:
Nothing further for us.

Mr. Settle:
The defendant has no further testimony to offer. I understand the evidence is closed, then, in the case?

The Court:
Yes.

Mr. Settle:
I don't know what Your Honor's practice is, but the defendant moves now at the close of all testimony in the case that the Court render and enter judgment herein in favor of the defendant, for the reason there has not been sufficient testimony introduced and offered to constitute any right of recovery in favor of the plaintiffs or either of them against the defendant.

The Court:
That is the proper practice.

Both sides closed.

PLAINTIFFS' EXHIBIT No. 1.

(Appears copied herein as Exhibit "A" Stipulation, pages 14 to 29 inclusive.)

PLAINTIFF'S EXHIBIT No. 2.

Company	Lease	1939	W. M. Slaid
Sinclair	Merton	Mar. 11-17	56 hrs.
Sinclair	Merton	Mar. 18-24	56 hrs.

Company	Lease	1939	W. M. Slaid
Sinclair	Merton	Mar. 25-27	24 hrs.
Bradshaw	Pope	May 15-21	56 hrs.
Texas Co.		May 22-28	56 hrs.
		June-28-July 4	56 hrs.
		July 5-11	56 hrs.
		July 11-13	24
Standolind	Minzer	July 15-21	56
		21-27 Eddon	56
		28-July 3	56
		July 4-10	56
		11-14	32
		Aug. 24-30	56
		Aug. 31-Sept. 6	56
Standolind	Sackett	Sept. 18	8
Standolind	Sackett	Sept. 24	8
Standolind	Cobb	Oct. 9-15	56
		16-22	56
Standolind	Cobb	Oct. 25-29	56
		Oct. 30-Nov. 5	56
		Nov. 6-12	56
Standolind	Cobb	Nov. 13-19	56
		Nov. 20-22	24
Standolind	Pond	Dec. 4-10	56
		Dec. 11-17 Ex on	56
		Dec. 18-20	24
		Dec. 22-23	16
		Dec. 27-31	40
	1940—New Year		
Texas	Pond	Jan. 2- 8	56
		Jan. 9-10	16
		Jan. 12-18 Edd off	56
		19-25	56
		26-28	24
		Feb. 5-11	56
		Feb. 12-18	56

Lewis	Feb. 19	8	
	Feb. 23-29	56	Edd on 25th
	Mar. 1- 7	56	
	8-14	56	
	15-21	56	
	23-29	56	
	30-Apr. 5	56	
	Apr. 6-12	56	
	Apr. 13-14	16	
	Apr. 22-27	48	
	Apr. 29-May 5	56	
	May 6-12	56	
	May 13-19	56	
	20-24	40	
	May 29-June 4	56	
	June 4-11	56	
	June 12-18	56	
	June 19-25	56	
Fired	June 27-28	16	
	July 6- 9	32	
	July 12-18	56	
	19-25	56	

(Close of Exhibit No. 2.)

PLAINTIFFS' EXHIBIT No. 3.

Edgar Slaid.

1939.

Stanolind Co. Kinzer	July 21-27	56	
	28-July 3	56	
	July 4-10	56	
	11-14	32	
	Aug. 24-30	56	
	Aug. 31-Sept. 6	56	
	Sept. 18	8	

Standalind Cab	Sakett	Sept. 24	8		
		Oct. 9-15	56		
		Oct. 15-22	56		
		Oct. 23-29	56		
		Oct. 30-Nov. 5	56		
		Nov. 6-12	56		
		Nov. 13-19	56		
		Nov. 20-22	24		
	Rand	Dec. 11-17	56		
		Dec. 18-20	24		
		Dec. 22-23	16	June 12-18	56
		Dec. 27-31	40	June 19-25	56
1940		Jan 2- 8	56	June 27-28	16
		Jan. 9-10	16	July 6- 9	32
		Jan. 12-18	56	July 12-18	56
				July 19-25	56
	Lewis	Jan. 26-29	32	July 26-Aug. 1	56
		Mar. 1- 7	56	Aug. 2- 8	56
		Mar. 8-14	56	Aug. 9	58
		Mar. 15-21	56	Aug. 26-Sept. 1	56
		Mar. 23-29	56	Sept. 2- 7	48
		Mar. 29-May 5	56		
		May 6-12	56		
		May 13-19	56		
		20-24	56	)434 hrs	
		May 29-June 4	56		
		June 4-11	56		
		July 26-Aug. 1	56		
		Aug. 2- 8	56		
		Aug. 9	8		
		Aug. 26-Sept. 1	56		
		Sept. 2- 7	48		

604 1 hrs.

(Close of Exhibit 3.)

PLAINTIFFS' EXHIBIT No. 4.

Overtime on Warren and Bradshaw for B. R. Gray.

44 hour week. 1939.

Sinclair			
Standolind Oil Co.	Merton Lease	Mar. 23-27	40 hours
Bradshaw Oil Co.	Pope Lease	May 15-21	56 hours
		May 22-28	56 hours
Standolind	Kinzer Lease	July 20-26	56 hours
		July 27-Aug. 2	56 hours
		Aug. 3- 9	56 hours
		Aug. 10-14	40 hours
		Aug. 24-30	56 hours
		Aug. 31-Sept. 6	56 hours
	Sackett Lease	Sept. 18	8 hours
		Sept. 24	8 hours
	Cobb Lease	Oct. 9-15	56 hours
		Oct. 16-22	56 hours
	42 hour week		
		Oct. 24-30	56 hours
		Oct. 31-Nov. 6	56 hours
		Nov. 7-13	56
		Nov. 14-20	56
		Nov. 21-22	16
Texas Oil Co.	Pond Lease	Dec. 14-20	56
		Dec. 22-28	32
		Dec. 28-Jan. 4	48
	1940	Jan. 5-10	48
		Jan. 12-18	56
		Jan. 19-25	56
		Jan. 26-28	24
		Feb. 5-11	56
		Feb. 12-18	56
	Lewis Lease	Feb. 23-29	56

	Mar. 1- 7	56
	Mar. 8-14	56
	Mar. 23-29	56
	Mar. 30-Apr. 5	56
	Apr. 6-12	56
	Apr. 13-14	16
	Apr. 22-27	48
	Apr. 29-May 5	56
	May 6-12	56
	May 13-19	56
	May 20-24	40
	May 29-June 4	56
	June 5-11	56
	June 12-18	56
	June 19-25	56
	June 26-28	24
	July 6-12	40
	July 13-19	56
	July 20-26	56
	July 27-Aug. 2	56
	Aug. 3- 9	56
Pond Lease	Aug. 26-Sept. 1	56
	Sept. 2- 7	48

Overtime: 524 hours @ 40.5 per hour—$212.22.

B. R. GRAY,
P. O. Box 558,
Pampa, Texas.

PLAINTIFFS' EXHIBIT No. 5.

This is the time not counting the weeks we were off, but starting anew each time we went back to work.

1934	May 8-14	56 hours	Clyde Cole
	May 15-21	56 hours	driller who
	May 22-28	40 hours	hired me.
	June 19-25	24 hours	Scott Lener-
	Lost 6 days on account of illness.		ette driller who hired
	June 28-July 4	56 hours	me.
	July 5-11	40 hours	
	July 12-18	56 hours	
	July 19-25	48 hours	
	26-Aug. 1	56 hours	
	Aug. 2- 8	56 hours	
	Aug. 9-15	56 hours	
	Aug. 16-22	56 hours	
	Aug. 23-29	56 hours	
	Aug. 30-Sept. 5	56 hours	
	Sept. 6-12	56 hours	
	Sept. 13-19	56 hours	
	Sept. 20-26	56 hours	
	Sept. 27-Oct. 3	56 hours	
	Oct. 4-10	48 hours	
	Oct. 11-17	56 hours	
	Oct. 18-24	24 hours	
42			
	Nov. 1- 7	56 hours	
	Nov. 8-14	56 hours	
	Nov. 15-21	56 hours	
	Nov. 22-28	64 hours	
	Nov. 29-Dec. 5	56 hours	
	Dec. 6-12	56 hours	
	13-19	56 hours	

	20-26	24 hours
	27-Jan. 2 1940	56 hours
1940	Jan. 3- 9	56 hours
	10-16	40 hours
	Jan. 17-23	56 hours
	Jan. 24-30	40 hours
	Jan. 31-Feb. 6	24 hours
	Feb. 7-13	56 hours
	Feb. 14-20	48 hours
	Feb. 21-27	32 hours
	Feb. 28-Mar. 5	56 hours
	Mar. 6-12	56 hours
	Mar. 13-19	56 hours
	Mar. 20-26	48 hours
	Mar. 27-Apr. 2	56 hours
	Apr. 3- 9	56 hours
	Apr. 10-16	32 hours
	Apr. 17-23	16 hours
	Apr. 24-30	56 hours
	May 1- 7	56 hours
	May 8-14	56 hours
	May 15-21	56 hours
	May 22-28	24 hours
	May 29-June 4	56 hours
	June 5-11	56 hours
Page 2	June 12-18	56 hours
	June 19-25	56 hours
	June 26-July 2	56 hours
	July 3- 9	56 hours
	July 10-16	40 hours
	July 17-23	56 hours
	July 24-30	56 hours
	July 31-Aug. 6	56 hours
	Aug. 7-13	24 hours
	20-26	56 hours
	[illegible]-Sept. 2	56 hours
	Sept. 3- 9	40 hours

PLAINTIFFS' EXHIBIT No. 6.

O. V. Hall.

Oct. 24, 1938—44 hr. work week.

Well Worked On	Date	Days	Hours of Overtime
	Oct. 24-31	56 hrs.	12 hrs. overtime
	Nov. 1- 8	56 hrs.	12 hrs. overtime
Brad	Dec. 24-1 Jan.	56 hrs.	12 hrs. overtime
	Jan. 1- 8	56 hrs.	12 hrs. overtime
	Feb. 12-19	56 hrs.	12 hrs. overtime
	Feb. 19-26	56 hrs.	12 hrs. overtime
	Feb. 26-30	32 hrs.	No hrs. overtime
Sun	Mar. 3-10	56 hrs.	12 hrs. overtime
	Mar. 10-17	56 hrs.	12 hrs. overtime
Sun	Mar. 17-23	48 hrs.	4 hrs. overtime
	Mar. 25-Apr. 1	56 hrs.	12 hrs. overtime
	Apr. 1- 8	56 hrs.	12 hrs. overtime
	Apr. 8-12	32 hrs.	No hrs. overtime
	May 15-21	56 hrs.	12 hrs. overtime
	May 21-28	56 hrs.	12 hrs. overtime
	June 24-30	56 hrs.	12 hrs. overtime
P. Cistern	July 1- 8	56 hrs.	12 hrs. overtime
	July 15-22	56 hrs.	12 hrs. overtime
	July 22-29	56 hrs.	12 hrs. overtime
Pings	Aug. 1- 8	56 hrs.	12 hrs. overtime
	Aug. 8-14	56 hrs.	12 hrs. overtime
	Aug. 14-33	56 hrs.	12 hrs. overtime
	Sept. 2-Oct. 1	56 hrs.	12 hrs. overtime
Cobb	Oct. 1- 9	56 hrs.	12 hrs. overtime
	Oct. 8-15	56 hrs.	12 hrs. overtime
	Oct. 15-23	56 hrs.	12 hrs. overtime

Oct. 24, 1939—42 hr. work week.

Well Worked On	Date	Days	Hours of Overtime
	Oct. 24-31	56 hrs.	14 hrs. overtime
Cobb	Nov. 1- 8	56 hrs.	14 hrs. overtime
	Nov. 8-15	56 hrs.	14 hrs. overtime
	Nov. 15-22	56 hrs.	14 hrs. overtime
	Jan. 1, 1940—42 hr. work week.		
	Jan. 1- 8	56 hrs.	14 hrs. overtime
	Jan. 8-14	56 hrs.	14 hrs. overtime
	Jan. 14-21	56 hrs.	14 hrs. overtime
	Jan. 21-27	48 hrs.	6 hrs. overtime
	Feb. 1- 8	56 hrs.	14 hrs. overtime
	Feb. 8-14	56 hrs.	14 hrs. overtime
	Feb. 14-21	56 hrs.	14 hrs. overtime
Lewis	Feb. 21-26	40 hrs.	No hrs. overtime
	Mar. 1- 7	56 hrs.	14 hrs. overtime
	Mar. 7-14	56 hrs.	14 hrs. overtime
	Mar. 14-21	56 hrs.	14 hrs. overtime
	Apr. 1- 8	56 hrs.	14 hrs. overtime
	Apr. 8-14	56 hrs.	14 hrs. overtime
	Apr. 14-21	56 hrs.	14 hrs. overtime
	Apr. 21-22	8 hrs.	No hrs. overtime
	May 1- 8	56 hrs.	14 hrs. overtime
	May 8-14	56 hrs.	14 hrs. overtime
	May 14-21	56 hrs.	14 hrs. overtime
	May 21-27	48 hrs.	6 hrs. overtime
	June 1-18	56 hrs.	14 hrs. overtime
	June 8-14	56 hrs.	14 hrs. overtime
	June 14-21	56 hrs.	14 hrs. overtime
	June 21-28	56 hrs.	14 hrs. overtime
	July 8-15	56 hrs.	14 hrs. overtime
	July 15-22	56 hrs.	14 hrs. overtime
	July 22-29	56 hrs.	14 hrs. overtime
	Aug. 9-15	56 hrs.	14 hrs. overtime

Well Worked On	Date	Days	Hours of Overtime
	Aug. 15-22	56 hrs.	14 hrs. overtime
	Aug. 22-23	8 hrs.	14 hrs. overtime
	Sept. 1- 8	56 hrs.	14 hrs. overtime
	Sept. 8-14	56 hrs.	14 hrs. overtime

Total.....712 hrs. overtime

(End of Exhibit No. 6,)

PLAINTIFFS' EXHIBIT No. 7.

E. S. Morgan.

Oct. 24, 1938—Oct. 24, 1939—44 hour week.

Date	Hours Worked	Overtime
Oct. 24-31	56	12
Nov. 1- 8	56	12
Dec. 24-30	56	12
1939.		
Feb. 12-19	56	12
Feb. 19-26	56	12
Feb. 26-30	32	..
Mar. 3-10	56	12
Mar. 10-17	56	12
Mar. 17-23	56	12
Mar. 23-Apr. 1	56	12
Apr. 1- 8	56	12
Apr. 8-12	32	..
May 15-21	56	12
May 21-28	56	12

Date	Hours Worked	Overtime
June 22-28	56	12
June 28-July 5	56	12
July 5-12	56	12
July 16-22	56	12
July 22-30	56	12
July 31-Aug. 6	56	12
Aug. 6-13	56	12
Aug. 13-20	56	12
Aug. 20-24	32	..
Sept. 10-15	42	..
Sept. 15-22	56	12
Oct. 8-15	56	12
Oct. 15-22	56	12
Oct. 22-29	56	12
Change to 42 hr. work week.		
Nov. 1- 8	56	14
Nov. 8-15	56	12
Nov. 24-30	56	12
Dec. 1- 8	56	12
Dec. 8-15	56	14
Dec. 15-22	56	14
Dec. 22-29	56	12
1940.		
Jan. 2-9	56	14
Jan. 9-16	56	14
Jan. 16-23	56	14
Jan. 23-30	56	14
Feb. 5-11	56	14
Feb. 11-15	32	..
Feb. 15-22	56	14
Feb. 22-26	32	..

Mar. 1- 7	56	14
Mar. 7-14	56	14
Mar. 14-21	56	14
Mar. 21-28	56	14
Apr. 1- 7	56	14
Apr. 7-14	56	14
Apr. 16-22	56	14
May 1- 7	56	14
May 7-14	56	14
May 14-21	56	14
May 21-27	56	14
June 1- 7	56	14
June 7-14	56	14
June 14-21	56	14
June 21-27	56	14
July 7-14	56	14
July 14-21	56	14
July 21-27	56	14
Aug. 7-14	56	14
Aug. 14-21	56	14
Aug. 21-24	32	—
Sept. 8-15	56	14
Total hrs. overtime		756

(End of Exhibit 7.)

PLAINTIFFS' EXHIBIT No. 8.

Warren & Bradshaw Drilling Co.,
National Bank of Tulsa Bldg., Tulsa, Oklahoma.

Period Worked	Days Worked	Total Earnings	Deductions Federal O. A. B.	Deductions Miscl. Ded.	Net Amount
(In pencil: 128 hours 87¼ per hour)					
Last half Dec.	16	112.00	1.12		110.88
(Bears Pencil notation 1939")					2410

This is your record of salary and deductions and should be carefully preserved. Detach from Check.

* * * * * * * *

Warren & Bradshaw Drilling Co.,
National Bank of Tulsa Bldg., Tulsa, Oklahoma.

Period Worked	Days Worked	Total Earnings	Deductions Federal O. A. B.	Deductions Miscl. Ded. Amt.	Deductions Miscl. Ded. Explan	Net Amount
1st 1/2 Dec.	3	21.00	.21			20.79
						2290.

This is your record of salary and deductions and should be carefully preserved. Detach from Check.

* * * * * * * *

(Note:—Stars separate individual voucher slips comprising the Exhibit 8.)

* * * * * * * *

Warren & Bradshaw Drilling Company,

No. 2999. Tulsa, Oklahoma.

Retain this record; it is a statement of your earnings and tax deductions as reported to the Federal and State Governments.

State	Time Worked Days or Hours	Rate	Gross Pay	Deduction Social Security Tax	Deduction Miscellaneous	Net Pay
Tex.	12	7.00	84.00	.84		83.16

Check Number	Date Period Ending	Name
2999	1/31/40	J. R. Miller

Detach this statement before cashing.

(Pencil notation: 96 hours 87½¢ per 1-31-40
368 begng 12-13-39 ending 1-27-40.)

* * * * * * * *

Warren & Bradshaw Drilling Company,

No. 2726. Tulsa, Oklahoma.

Retain this record; it is a statement of your earnings and tax deductions as reported to the Federal and State Governments.

State	Time Worked Days or Hours	Rate	Gross Pay	Deduction Social Security Tax	Deduction State	Deduction Miscellaneous
Tex.	15	7.00	105.00	1.05		

Net Pay	Check Number	Date Period Ending	Name
103.95	2726	1 17 40	J. R. Miller

Detach this statement before cashing.

(Bears pencil notations: 120 hrs. 87¼¢ per hour.
1-17-40.)

* * * * * * * *

Warren & Bradshaw Drilling Company,
No. 6043. Tulsa, Oklahoma.

Retain this record; it is a statement of your earnings and tax deductions as reported to the Federal and State Governments.

State	Time Worked Days or Hours	Rate	Gross Pay	Deduction Social Security Tax	Deduction State	Deduction Miscellaneous
Tex.	13	11.00	143.00	1.43		

Net Pay	Check Number	Date Period Ending	Name
141.57		7/15/40	J. R. Miller

Detach this statement before cashing.

(Bears pencil notations 104 hours 31.37½ per hour. 7-15-40
232 hours beging 7-3-ending 7-3 40.)

* * * * * * * *

Warren & Bradshaw Drilling Co.,
No. 6353. Tulsa, Oklahoma.

Retain this record; it is a statement of your earnings and tax deductions as reported to the Federal and State Governments.

State	Time Worked Days or Hours	Rate	Gross Pay	Deduction Social Security Tax	Deduction State	Deduction Miscellaneous
Tex.	16	11.00	176.00	-.76		

Net Pay	Check Number	Date Period Ending	Name
174.24		7/31/40	J. R. Miller

Detach this statement before cashing.

(Bears pencil notation: 128 hours $1.37½ per hour 7-31-40)

* * * * * * * *

Warren & Bradshaw Drilling Company,
No. 7059. Tulsa, Oklahoma.

Retain this record; it is a statement of your earnings and tax deductions as reported to the Federal and State Governments.

State	Time Worked Days or Hours	Rate	Gross Pay	Deduction Social Security Tax	Deduction State	Deduction Miscellaneous
Tex.	6	11.00	66.00	.66		

Net Pay	Check Number	Date Period Ending	Name
65.34		8/31/40	J. R. Miller

Detach this statement before cashing.

(Bears pencil notations: 48 hours $1/37½ per hour 8-31-40
120 hours 2 full weeks beging 8-10-ending 8-24.40)

* * * * * * * * *

Warren & Bradshaw Drilling Company,
No. 6585. Tulsa, Oklahoma.

Retain this record; it is a statement of your earnings and tax deductions as reported to the Federal and State Governments.

State	Time Worked Days or Hours	Rate	Gross Pay	Deduction Social Security Tax	Deduction State	Deduction Miscellaneous
Tex.	9	11.00	99.00	.99		

Net Pay	Check Number	Date Period Ending	Name
98.01		8/15/40	J. R. Miller.

Detach this statement before cashing.

(Bears pencil notations: 72 hours $1.37 per hour. 8-15-40.)

* * * * * * * * *

Warren & Bradshaw Drilling Company,
No. 3244. Tulsa, Oklahoma.

Retain this record; it is a statement of your earnings and tax deductions as reported to the Federal and State Governments.

State	Time Worked Days or Hours	Rate	Gross Pay	Deduction Social Security Tax	Deduction State	Deduction Miscellaneous
Tex.	7	7.00	49.00	.49		

Net Pay	Check Number	Date Period Ending	Name
48.51		3/1/40	J. R. Miller

Detach this statement before cashing.

(Pencil notations: 56 hours 87½¢ per hour 3-1-40.)

* * * * * * * *

Warren & Bradshaw Drilling Company,
No. 4763. Tulsa, Oklahoma.

Retain this record; it is a statement of your earnings and tax deductions as reported to the Federal and State Governments.

State	Time Worked Days or Hours	Rate	Gross Pay	Deduction Social Security Tax	Deduction State	Deduction Miscellaneous
Tex.	15	11.00	165.00	1.65		

Net Pay	Check Number	Date Period Ending	Name
163.35		5/15/40	J. R. Miller

Detach this statement before cashing.

(Bears pencil notations:
120 hours 1.37½ per hr: 5-15-40
152 hour 1.37½ beging 4-27-ending 5-15-40
24 hour 87½ beging 4-24 eng 4-)

* * * * * * * *

Warren & Bradshaw Drilling Company,
No. 4565. Tulsa, Oklahoma.

Retain this record; it is a statement of your earnings and tax deductions as reported to the Federal and State Governments.

State	Time Worked Days or Hours	Rate	Gross Pay	Deduction Social Security Tax	Deduction State	Deduction Miscellaneous
Tex.	7	7.00	65.00	.65		

Net Pay	Check Number	Date Period Ending	Name
64.35		4/30/40	J. E. Miller

Detach this statement before cashing.

(Bears Pencil notations: 56 hour 87¼ per 4-30-40.)

* * * * * * * *

Warren & Bradshaw Drilling Company,
No. 4300. Tulsa, Oklahoma.

Retain this record; it is a statement of your earnings and tax deductions as reported to the Federal and State Governments.

State	Time Worked Days or Hours	Rate	Gross Pay	Deduction Social Security Tax	Deduction State	Deduction Miscellaneous
Tex.	13	7.00	91.00	.91		

Net Pay	Check Number	Date Period Ending	Name
90.09		4/15/40	J. R. Miller

Detach this statement before cashing.

(Bears pencil notations: 104-87½ per hour 4-15-40.)

* * * * * * * *

Warren & Bradshaw Drilling Company,
No. 5385 Tulsa, Oklahoma.

Retain this record; it is a statement of your earnings and tax deductions as reported to the Federal and State Governments.

State	Time Worked Days or Hours	Rate	Gross Pay	Deduction Social Security Tax	Deduction State	Deduction Miscellaneous
Tex.	15	11.00	165.00	1.65		

Net Pay	Check Number	Date Period Ending	Name
163.35		6/15/40	J. R. Miller

Detach this statement before cashing.

(Bears pencil notations: 120 hour $1.37½ per hour 336 hours beging 5-20 ending 6-30-40 6-15-40.)

* * * * * * * * *

Warren & Bradshaw Drilling Company,
No. 5770. Tulsa, Oklahoma.

Retain this record; it is a statement of your earnings and tax deductions as reported to the Federal and State Governments.

State	Time Worked Days or Hours	Rate	Gross Pay	Deduction Social Security Tax	Deduction State	Deduction Miscellaneous
Tex.	15	11.00	165.00	1.65		

Net Pay	Check Number	Date Period Ending	Name
163.35		6/30/40	J. R. Miller

Detach this statement before cashing.

(Bears pencil notations: 120 hours $1.37½ per hour 6-30-40.)

* * * * * * * * *

Warren & Bradshaw Drilling Company,
No. 5221 Tulsa, Oklahoma.

Retain this record; it is a statement of your earnings and tax deductions as reported to the Federal and State Governments.

State	Time Worked Days or Hours	Rate	Gross Pay	Social Security Tax	Deduction State	Deduction Miscellaneous
Tex.	12	11.00	132.00	1.32		

Net Pay	Check Number	Date Period Ending	Name
130.68		5/31/40	J. R. Miller

Detach this statement before cashing.

(Bears pencil notations: 96 $1.37½ per hour. 5-31-40.)

* * * * * * * *

(End of Exhibit No. 8.)

PLAINTIFFS' EXHIBIT No. 9.

Jim Huddleston.

Oct. 24, 1938—Oct. 24, 1939—44 hour work week.

Date	Hours Worked	Overtime
Oct. 24-31	56	12
Nov. 1- 8	56	12
Dec. 24-30	56	12
1939.		
Feb. 12-19	56	12
Mar. 7-13	56	12

Date	Hours Worked	Overtime
Mar. 13-18	56	..
May 8-14	56	12
May 15-21	56	12
May 21-28	56	12
June 19-25	48	4
June 25-July 1	56	12
July 1- 9	56	12
July 8-15	40	..
July 15-22	56	12
July 22-29	48	4
July 29-Aug. 5	56	12
Aug. 5-12	56	12
Aug. 12-19	56	12
Aug. 19-26	64*	20
Aug. 27-Sept. 2	56	12
Sept. 2- 9	64*	20
Sept. 9-16	64*	20
Sept. 16-23	64*	20
Sept. 16-23	64*	20
Sept. 23-30	56	12
Oct. 1- 7	64*	20
Oct. 7-14	56	12
Oct. 14-20	48	4

Change to 42 hr. work week.

Nov. 1- 7	56	14
Nov. 7-14	56	14
Nov. 14-21	56	14
Nov. 21-28	56	14
Nov. 28-Dec. 5	56	14
Dec. 5-12	56	14
Dec. 12-19	56	14
Dec. 27-Jan. 3	56	14

1940.

Date	Hours Worked	Overtime	
Mar. 24-30	56	14	
Mar. 30-Apr. 6	56	14	
Apr. 6-13	56	14	
Apr. 13-20	56	14	
May 14-20	56	14	
May 20-27	48	6	
June 1- 7	56	14	
June 7-10	24	..	
June 18-24	56	14	
June 24-30	48	6	

1940.

Jan. 3-10	56		
Jan. 12-19	56		
Jan. 19-26	56		
Feb. 5-12	56		
Feb. 12-19	56		
Feb. 23-Mar. 1	56		
Mar. 1- 8	56		
Mar. 8-15	56		
*Made double tower.			
July 5-11	56	14	
July 11-18	56	14	
July 18-25	56	14	
July 25-Aug. 1	56	14	
Aug. 1- 8	56	14	
Aug. 8-15	56	14	
Aug. 30-Sept. 5	56	14	
Sept. 5-12	56	14	Note:
Sept. 18-24	56	14	Lined
Sept. 24-Oct. 1	56	14	out in
Oct. 2- 9	56	14	pencil)

Date	Hours Worked	Overtime
Oct. 9-15	48	8
Oct. 27-Nov. 2	56	14
Nov. 2- 9	56	14
Dec. 19-25	56	14
Dec. 25-31	48	6

Total 762 hrs. overtime.

(End of Exhibit No. 9.)

PLAINTIFFS' EXHIBIT No. 10.

(Note: This Exhibit consists of six checks, and each check is separated from the next by stars as above.)

* * * * * * * *

No. 2267.

Warren Bradshaw Drilling Company,
National Bank of Tulsa Bldg.

Tulsa, Okla., 12/18/39.

Pay to the Order of K. R. Valgmore $19.30, Warren & Bradshaw Co., $19 and 30 cts. Dollars.

To The National Bank of Tulsa,
Tulsa, Oklahoma.

WARREN & BRADSHAW
DRILLING CO.,
Payroll Account,
By BOB MARSHALL.

Audited J. E. C.

(Reverse side bears ink indorsement "K. R. Valgmore" and five or six stamps of banks through which check cleared—stamps are illegible and omitted for sake of brevity.)

* * * * * * * *

No. 2398.

Warren Bradshaw Drilling Company,
National Bank of Tulsa Bldg.

Tulsa, Okla., 1/3/40.

Pay to order of R. R. Valgumore, $77.22, Warren & Bradshaw Co., $77 and 22 cts. Dollars.

To The National Bank of Tulsa,
Tulsa, Oklahoma.

WARREN. & BRADSHAW
DRILLING CO.,
Payroll Account,
By BOB MARSHALL.

Audited J. E. C.

(Bears indorsement "R. R. Valgumore" and "E. & M. Cafe by Lucille" with stamps of various banks, illegible and omitted for brevity.)

* * * * * * * * *

Pay Roll Check.

No. 2705.

Warren Bradshaw Drilling Company,
National Bank of Tulsa Bldg.

Check No. 2765. Date 1/17/40.

Pay to the Order of K. R. Valgamore, $90.09, Warren & Bradshaw Co., $90 and 09 cts.

WARREN & BRADSHAW
DRILLING COMPANY,
Payroll Account,
By BOB MARSHALL.

National Bank of Tulsa,
Tulsa, Oklahoma.

Audited C. E. J.

(Indorsed "K. R. Valgamore" and bears stamps of various banks, omitted for sake of brevity.)

* * * * * * * * *

No. 2996.

Pay Roll Check.

Warren Bradshaw Drilling Company,
Tulsa, Oklahoma.

Check No. 2996. Date 1/31/40.

Pay to the Order of K. R. Valgamore, $77.22, Warren & Bradshaw, $77 and 22 cts.

WARREN & BRADSHAW
DRILLING COMPANY,
Payroll Account,
By BOB MARSHALL.

National Bank of Tulsa,
Tulsa, Oklahoma.

Audited C. E. J.

(Indorsed "K. R. Valgamore" and bears stamps of various banks on back—omitted for the sake of bevity.)

* * * * * * * *

No. 3260.

Pay Roll Check.

Warren Bradshaw Drilling Company,
National Bank of Tulsa, Building,
Tulsa, Oklahoma.

Check No. 3260. Date 2/15/40.

Pay to the Order of R. R. Valgamore, $70.78, Warren & Bradshaw, $70 and 78 cts.

WARREN & BRADSHAW
DRILLING COMPANY,
Payroll Account,
By BOB MARSHALL.

National Bank of Tulsa,
Tulsa, Oklahoma.

Audited J. E. C.

Reverse: Indorsed R. R. Valgamore, and bears various back stamps.

* * * * * * * *

Pay Roll Check.

Warren Bradshaw Drilling Company,
National Bank of Tulsa Building,
Tulsa, Oklahoma.

Check No. 3448. Date 2/29/40.

Pay to the order of R. R. Valgamore, $25.74, Warren & Bradshaw Co., $25 and 74 cts.

WARREN & BRADSHAW
DRILLING CO.,
Payroll Account,
By BOB MARSHALL.

National Bank of Tulsa,
Tulsa, Oklahoma.

Audited J. E. C.

(End of Exhibit No. 10.)

State of Texas,
County of Potter.

I, Ross M. Lambdin, Official Reporter appointed by the Court by agreement of parties to report the above entitled and numbered cause of action, hereby certify that the above and foregoing 146 pages of typewritten matter are a true and correct transcript of my shorthand notes made on the trial of said cause, including all the evidence admitted by the Court, the objections of counsel to the rul-

ings of the Court, and remarks of the Court and exceptions to such rulings.

ROSS M. LAMBDIN.

MEMORANDUM OPINION OF JUDGE JAMES C. WILSON.

159 Filed 7-18-41.

(Title Omitted.)

The eight plaintiffs here sue the defendant for overtime under the Fair Labor Standards Act, Title 29 U. S. C. A. 201 et seq. They constituted a rotary drilling crew in drilling oil wells in the Panhandle Oil Field of Texas, or as defendant put it, holes in the ground, for the defendant. All of them drew rather good wages ranging from around $6.50 to $7.00 and up to as high as $11.00 per day for their work. As a practical matter, in the drilling of these oil wells, the defendant used rotary rigs for drilling the wells down to, or near to, the pay sand. At that juncture the rotary crews would cement the casing at or near the expected pay sand, and then would withdraw all the rotary machine and another crew would move in and complete the well, bring it in, or demonstrate that it was a dry hole, with cable tools. In other words, plaintiffs here did not do the whole job, but it was finished by the cable tools crew. That is true with respect to every well on which the plaintiffs worked that is involved in this suit. As far as the record shows, all of the wells upon which plaintiffs worked were producers of oil or gas in paying quantities. The defendant was not the owner of any of the leases worked upon. It was simply under contract for such owners to drill the wells. It had nothing whatever to do with

the wells, or holes in the ground, other than above indicated. When it finished such work, it would move to another location and commence another well, and so on. There were around thirty wells drilled by it upon which plaintiffs worked.

Defendant's first position is that plaintiffs were employed by it as a contract driller, and performing such labor for it, did not come under the terms of the Act. In other words, that because of defendant's position as an independent contractor, it was not engaged in interstate commerce in so working these men and the law was not applicable to it, etc. I cannot agree with that position. I am not able to see how the stated capacity in which the employer was engaged can affect the question as to whether these plaintiffs were engaged in producing goods for commerce under the Act. As relates to the applicability of the law, I am not able to distinguish between a contractor performing the work, and the owner of the lease himself performing it. It is the character of work done and engaged in by these plaintiffs for defendant that determines whether they come under the terms of the Act, and whether its provisions as to maximum hours and minimum wages apply. I hold against the defendant's contention in this regard.

The defendant's second intention is that the law is not applicable to these plaintiffs who drilled with a rotary rig for the reason they did not complete the wells. In other words, as indicated heretofore, because the wells were completed by a cable tools crew. I am not able to see that point either as defendant makes it. That seems to be settled against it on the very face of the statute itself, and by express words of the statute Sec. 203 of the Act deals with its definitions, and (j) of that section defining the word produced, says:

"(j) 'Produced' means produced, manufactured, mined, handled *or in any other manner worked on in any State;*

and for the purposes of this chapter an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, *or in any process or occupation necessary to the production thereof, in any State.*" (Italics mine.)

It can hardly be contended that plaintiffs in drilling the oil wells in part as they did with the rotary drills were not engaged in a process or occupation necessary to the production of oil in these wells, if any oil was ever to be produced. Plainly under this provision, the law was as applicable to their work as it would be to the cable tools crew that immediately followed them and brought the well in. One was just as necessary as the other, and each crew, of course, was engaged in an occupation necessary to the production of the oil. Suppose the plaintiffs, constitution a crew, or crews, when they had cemented the casing at or near the pay sand, had merely withdrawn their rotary tools and moved in cable tools, and themselves had continued and completed the work to a producing well. Under this statute, could their work while engaged with the rotary tools be distinguished from their work while engaged with their cable tools? Obviously not.

Lastly, defendant contends that the evidence is not sufficient to show, under the terms of the Act, that the plaintiffs were working in the production of goods for commerce. As to this, I stand upon my decision in the case of St. John v. Brown, et al, 38 Fed. Supl. 385 (Advance Sheets, June 9, 1941).

The defendant also contends that it is not shown that the crude oil, or the gas produced by the work of these plaintiffs, or any percentage of it, or by-products of either, actually moved in interstate commerce. Without

elaborating on the evidence introduced as to that issue, I hold that it is amply shown that both the crude oil produced from these wells, or by-products of it, and the gas produced from gas wells worked on by these plaintiffs, or large percentages of same, moved out of Texas into other States of the Union.

For the reasons stated, I hold that the plaintiffs are entitled to recover for the overtime shown by the evidence, and for a formula to be used in working out the rates for overtime, I refer to St. John v. Brown, supra. The judgment will carry with it an attorney's fee of $500.00 for plaintiffs' attorney. Also liquidated damages for each plaintiff in a sum equal to the individual recovery of each.

(Signed) JAMES C. WILSON,
United States District Judge.

JUDGMENT.

163 Filed: 7-18-41.

O. V. Hall, et al, Plaintiffs,
vs. #156—Civil.
Warren-Bradshaw Drilling Co., Defendant.

On the 7th day of July, A. D., 1941, came on to be heard the above entitled and numbered cause and came all parties and announced ready for trial. A jury having been waived, all matters in controversy were submitted to the Court, the Court sitting in regular session, this being a regular day of the Court's term. After hearing the pleading, evidence, and argument of counsel, the Court is of the opinion that the plaintiffs should recover.

Wherefore, it is ordered, adjudged and decreed by the Court that the plaintiffs do have and recover of and

from the defendant Warren-Bradshaw Drilling Company, a corporation, as follows:

1.	Kenneth Volgamore	$112.40
2.	O. V. Hall	$802.00
3.	W. N. Slaid	$759.00
4.	Edgar Slaid	$396.50
5.	E. S. Morgan	$614.00
6.	A. D. Harmon	$554.04
7.	J. M. Huddleston	$544.00
8.	J. R. Miller	$373.00
9.	B. R. Gray	$338.00

Said amounts as above set out being the amounts found by the Court to be the overtime hours due plaintiffs with the said amount doubled to include the liquidated damages due plaintiffs.

Wherefore it is ordered, adjudged and decreed by the Court that the plaintiffs as above named do have and recover of and from the defendant Warren-Bradshaw Drilling Company, a corporation, the amounts as set out together with all costs in this behalf expended, for which they may have their execution.

It further appearing to the Court that the plaintiffs in this suit were represented by Davis Scarborough, and that the said Davis Scarborough is entitled to an attorney's fee for said services performed, the Court finds that the sum of Five Hundred and no/100 ($500.00) Dollars would be a reasonable attorney's fee and does hereby order that the said Davis Scarborough do have and recover of and from the defendant Warren-Bradshaw Drilling Company, a corporation, the sum of Five Hundred and no/100 ($500.00) Dollars for which he may have his execution.

It is the further order of this Court that all costs in this behalf expended be taxed against the defendant Warren-Bradshaw Drilling Company and it is ordered that this judgment shall bear interest from this date until paid at the rate of six per cent per annum.

To All of which action, ruling and judgment of the Court, the defendant excepted.

Done, this the 18th day of July, 1941.

(Signed) JAMES C WILSON,
District Judge.

NOTICE OF APPEAL.

165 Filed: 7-26-41.

O. V. Hall, Kenneth Volgamore, W. N. Slaid, Edgar Slaid, A. D. Harmon, J. M. Huddleston, J. R. Miller, and B. R. Gray, Plaintiffs;

vs. No. 156—Civil.

Warren & Bradshaw Drilling Co., Defendant.

Notice Is Hereby Given that Warren & Bradshaw Drilling Company, defendant in the above entitled cause, hereby appeals to the Circuit Court of Appeals for the Fifth Circuit from the final judgment entered in this action on the 18th day of July, 1941.

WARREN & BRADSHAW
DRILLING COMPANY,

(Signed) By FRANK SETTLE,
E. O. MONNET and
SAM CLAMMER,

1001 Philtower Building,
Tulsa, Oklahoma.

(Signed) W. M. SUTTON,
Defendant's Attorneys.

Amarillo, Texas.

SUPERSEDEAS BOND.

166 — Filed: 7-26-41.

(Title Omitted.)

Know All Men By These Presents: That

We, Warren & Bradshaw Drilling Company, as principal, and Standard Accident Insurance Company, as surety, are held and firmly bound unto the above named plaintiffs in this action in the sum of $6,000.00, to which payment well and truly to be made, we bind ourselves, jointly and severally, our heirs, executors, successors and assigns, respectively, firmly by these presents.

Sealed with our seals and dated this 23rd day of July, 1941.

Whereas, the said defendant, Warren & Bradshaw Drilling Company, has prosecuted its appeal to the United States Circuit Court of Appeals for the Fifth Circuit, to reserve the judgment and decree entered in the said cause by the United States District Court for the Northern District of Texas, Amarillo Division, on the 18th day of July, 1941, against said defendant for the sum of $4,792.94, together with costs of the action and interest on said judgment from the date thereof.

Now, Therefore, the condition of this obligation is such that if the above named defendant, Warren & Bradshaw Drilling Company, shall prosecute its appeal to effect and answer and satisfy the judgment in full, together with costs, interest and damages for delay, if for any reason the appeal is dismissed or if the judgment is affirmed and satisfied in full, including such modification of the judg-

ment and such costs, interest and damages as the Appellate Court may adjudge and award, then this obligation to be void, otherwise to be in full force, virtue and effect.

WARREN & BRADSHAW
DRILLING COMPANY.
(Signed) By R. B. WARREN, JR.,
(Seal) Its President, Principal.

Attest:
(Signed) BOB BRADSHAW,
Its Secretary.

STANDARD ACCIDENT
INSURANCE COMPANY.
(Signed) By R. H. SIEGFRIED,
(R. H. Siegfried)
(Seal) Attorney-in-Fact, Surety.

Approved this 26th day of July, 1941.
(Signed) JAMES C. WILSON,
J.

State of Oklahoma,
County of Tulsa, ss.

On this 23rd day of July, 1941, before me the undersigned, a notary public within and for said county and State personally appeared R. B. Warren, Jr., known to me to be the person who executed the foregoing instrument on behalf of the principal, Warren & Bradshaw Drilling Company, as its President, and acknowledged to me that he executed the same.

(Signed) OPAL MEFFORD,
(Seal) Notary Public.

My Commission expires 12-31-41.

Standard Accident Insurance Company.
Detroit, Michigan.

Know All Men By These Presents: That the Standard Accident Insurance Company by K. R. Owen, its Vice-President in pursuance of authority granted by Section 10A of the By-Laws of said Company, a copy of which section is hereto attached, does hereby nominate, constitute and appoint R. H. Siegfried of the City of Tulsa, State of Oklahoma, its true and lawful agent and attorney-in-fact, to make, execute, seal and deliver for and on its behalf, and as its act and deed any and all bonds and undertakings, *except bonds guaranteeing the payment of principal and interest of notes, mortgage bonds and mortgages*, in its business of guaranteeing the fidelity of persons holding places of public or private trust, and in the performance of contracts other than insurance policies, and executing and guaranteeing bonds or other undertakings required or permitted in all actions or proceedings or by law required or permitted.

All such bonds and undertakings as aforesaid to be signed for the Company and the Seal of the Company attached thereto by the said R. H. Siegfried, individually, as occasion may require. And the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Detroit, State of Michigan, in their own proper persons.

In Witness Whereof, the said K. R. Owen has hereunto subscribed his name and affixed the Corporate Seal of the said Standard Accident Insurance Company this 30th day November, 1939.

STANDARD ACCIDENT
INSURANCE CO.
By K. R. OWEN,
Vice-President.

State of Michigan,
County of Wayne, ss.

On this 30th day of November, A. D. 1939, before the subscriber, a Notary Public of the State of Michigan, in and for the County of Wayne, duly commissioned and qualified came K. R. Owen, Vice-President of the Standard Accident Insurance Company, to me personally known to be the individual and officer described in, and who executed the preceding instrument, and he acknowledged the execution of the same, and being by me duly sworn, deposeth and saith, that he is the officer of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and the said Corporate Seal and his signature as officer was duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal at the City of Detroit, the day and year first above written.

B. B. MACK,
(Seal) Notary Public.

My Commission Expires May 14, 1943.

Extract from the By-Laws of the Standard Accident Insurance Company, adopted by the Board of Directors of said Company on August 1, 1922 as Section 9A, and readopted February 14, 1928 as Section 10A.

"The President, or any Vice-President, shall have power and authority to appoint resident Vice-Presidents, resident Assistant Secretaries and Attorneys-in-fact and to authorize them to execute on behalf of the Company and attach the Seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof."

I, K. R. Owen, Vice-President of the Standard Accident Insurance Company hereby certify that the foregoing is a true copy of Section 10A of the By-Laws of said Company, and is still in force.

In Testimony Whereof, I have hereunto subscribed my name as Vice-President and affixed the Corporate Seal of the Standard Accident Insurance Company this 30th day of November, A. D. 1939.

K. R. OWEN,
Vice-President.

I, Harry T. Winter, Assistant Secretary of the Standard Accident Insurance Co. hereby certify that the foregoing is a true and correct copy of Power of Attorney issued on behalf of R. H. Siegfried, and that same is still in force.

(Signed) HARRY T. WINTER,
Assistant Secretary.

Subscribed and sworn to before me this 23 day of July, 1941.

(Illegible),
(Seal) Notary Public.

My Commission Expires May 14, 1943.

STATEMENT OF POINTS.

171 Filed: 9-8-41.

(Title Omitted.)

Comes now the defendant, Warren-Bradshaw Drilling Company, and files this, a statement of the points upon

which it intends to rely upon the appeal of the above entitled and numbered cause to the United States Circuit Court of Appeals for the Fifth Circuit, and shows that such statement of points is as follows:

I.

The honorable District Court of the United States for the Northern District of Texas erred in overruling the motion of this defendant Warren-Bradshaw Drilling Company, for judgment in its favor, which motion was made in open Court, and in rendering judgment for the plaintiffs, for each and all of the following reasons, each of which constitutes a separate point intended to be relied upon:

(a) The evidence herein fails to establish that the defendant, Warren-Bradshaw Drilling Company, was engaged in commerce, or in the production of goods for commerce, as said terms are defined in the Fair Labor Standards Act of 1938, but, upon the contrary, discloses that this defendant was not engaged in commerce or in the production of goods for commerce but was engaged as an independent contractor in the occupation of drilling oil wells and had no interest in the oil that might thereafter be produced by another from the wells so drilled.

(b) The evidence herein fails to establish that the plaintiffs, while working for this defendant, were engaged in commerce or in the production of goods for commerce, as said terms are defined by the Fair Labor Standards Act of 1938, and that such plaintiffs are entitled to the benefits of said law.

(c) The evidence herein is insufficient to support a finding or conclusion that the plaintiffs herein, while

employed by the defendant, and engaged in rigging up and operating a set of rotary tools used in drilling a well to a depth short of the oil producing horizon, were engaged in commerce or in the production of goods for commerce, as such terms are defined in the Fair Labor Standards Act of 1938.

(d) The evidence herein is insufficient to establish that the oil that might be produced from wells worked upon by the plaintiffs herein moved in Interstate Commerce.

(e) The testimony herein discloses that, as to the respective plaintiffs, each received wages in excess of the minimum wage prescribed by the Fair Labor Standards Act of 1938, and that the defendant complied with such Act, as to the respective plaintiffs, by paying to the respective plaintiffs a definite sum for a definite number of hours worked during any work week, in accordance with the defendant's established schedule of wages for the particular kind of employment, which schedule was known to and accepted by the respective plaintiffs on the respective dates that they were employed, and which schedule of wages exceeded the minimum scale prescribed by the Fair Labor Standards Act of 1938.

II.

The evidence herein is insufficient to support the judgment herein in that it affirmatively appears from testimony of plaintiffs that during part of the time that the respective employees were engaged by the defendant that they were engaged in the performance of duties unrelated to commerce or the production of goods for commerce, and the time that such employees were so engaged is not segregated from the total time allegedly worked by such employees in the employ of the defendant.

III.

The testimony herein is wholly insufficient to establish that the defendant herein or the plaintiffs herein were engaged in commerce or the production of goods for commerce, in that the evidence is insufficient to establish that the oil and gas produced from the wells, upon which plaintiffs worked, moved in Interstate Commerce, and for such reason the Honorable District Court of the United States for the Northern District of Texas erred in overruling the defendant's motion for judgment and in rendering judgment for plaintiffs.

IV.

The Honorable District Court of the United States for the Northern District of Texas erred in overruling and in not sustaining defendant's objections to, and admitting in evidence plaintiffs' exhibits 2 to 10, both inclusive, for each and all of the reasons assigned in the objection to the admission of said exhibits.

V.

The Honorable District Court of the United States for the Northern District of Texas erred in overruling and in not sustaining defendant's objections to interrogatories 3, 4, 5, and 6, propounded to the witness, Harry W. Ferguson, by deposition and the answers of the said Harry W. Ferguson to such interrogatories for each and all of the reasons assigned to the objections in said testimony.

VI.

The honorable District Court of the United States for the Northern District of Texas erred in overruling and

in not sustaining the defendant's objection to interrogatories 5 and 6, propounded to the witness, George Sheppard, by written interrogatories and the answer of the witness, George Sheppard, to said interrogatories 5 and 6, for each and all of the reasons assigned to the objections in said testimony.

VII.

The testimony in this case establishes that under the various contracts of employment with the respective plaintiffs that the respective plaintiffs agreed to accept and the defendant agreed to pay a certain designated sum for a definite number of hours worked, and that said sum so agreed to be paid and accepted for such number of hours worked in any particular work week exceeded the minimum wage required under the Fair Labor Standards Act of 1938, and was not in violation thereof, and the Honorable District Court for the Northern District of Texas therefore erred in overruling and in not sustaining defendant's motion for judgment in its favor and in rendering judgment for the respective plaintiffs herein.

Respectfully submitted,

SETTLE, MONNET & CLAMMER,

Tulsa, Oklahoma.

UNDERWOOD, JOHNSON, DOOLEY & WILSON,
Attorneys for Defendant,
Warren-Bradshaw Drilling Company.

Amarillo, Texas.

(Signed) W. M. SUTTON,
Of Counsel.

EXTENSION ORDER OF JUDGE JAMES C. WILSON.

176 Filed: 8-28-41.

(Title Omitted.)

For satisfactory reasons appearing to the Court, the time for filing the record on appeal and docketing the action in the above entitled and numbered cause in the United States Circuit Court of Appeals for the Fifth Circuit is hereby enlarged and extended for a period of 30 days from and after the date hereof.

Done this the 23 day of August, 1941.

(Signed) JAMES C. WILSON,
United States District Judge.

STIPULATION FOR RECORD ON APPEAL.

177 Filed: 9-8-41.

(Title Omitted.)

The plaintiffs in the above entitled and numbered cause, to-wit: O. V. Hall, W. N. Slaid, Edgar Slaid, E. S. Morgan, A. D. Harmon, J. M. Huddleston, J. R. Miller, B. R. Gray and Kenneth Volgamore, acting by and through their undersigned counsel, Davis Scarborough, and the defendant, Warren-Bradshaw Drilling Company, acting through its undersigned counsel, Settle, Monnet and Clammer and Underwood, Johnson, Dooley and Wilson, pursuant to Rule 75 (f) of the rules of civil procedure for the District Courts of the United States, stipulate and designate the parts of the record proceedings and evidence in the above entitled and numbered cause to be included in the record on appeal of the above case on the appeal taken by the

defendant, Warren-Bradshaw Drilling Company, and stipulate that such record on appeal shall include the following parts of the record, proceedings and evidence, and no other, to-wit:

1. Plaintiffs' First Amended Original Complaint.

2. Answer of Defendant, Warren-Bradshaw Drilling Company.

3. Reporter's complete transcript of the evidence and proceedings had upon the trial of the above cause in the District Court of the United States for the Northern District of Texas, Amarillo Division.

4. Memorandum Opinion by Judge James C. Wilson rendered in open Court July 18th, 1941.

5. Judgment entered July 18, 1941.

6. Notice of appeal, and date of filing.

7. Supersedeas bond.

8. Statement of Points to be relied upon on appeal.

9. Order extending time for filing record in United States Circuit Court of Appeals for the Fifth Circuit.

10. Stipulation of parties as to record and parts of record proceedings and evidence to be included in record on appeal.

In Witness Whereof the respective parties to said cause have executed these presents through their respective counsel.

(Signed) DAVIS SCARBOROUGH,
Attorney for Plaintiffs.
SCARBOROUGH, YATES & SCARBOROUGH,
Of Counsel for Plaintiff.
SETTLE, MONNET AND CLAMMER,

Tulsa, Oklahoma.

UNDERWOOD, JOHNSON, DOOLEY AND WILSON,

Amarillo, Texas.

(Signed) By W. M. SUTTON,
Attorneys for Defendant.

179 CLERK'S CERTIFICATE.

United States of America,
Northern District of Texas.

I, GEORGE W. PARKER, Clerk of the District Court of the United States for the Northern District of Texas, do hereby certify that the foregoing is a true and complete transcript of the record and proceedings had in said Court in Civil Action No. 156 wherein O. V. Hall, Individually and as Agent for W. N. Slaind, Edgar Slaid, E. S. Morgan, A. D. Harmon, J. M. Huddleston, J. R. Miller and B. R. Gray, is plaintiff and Warren-Bradshaw Drilling Company is defendant, as called for in the Stipulation for Record filed herein, as fully as same remain on file and of record in my office in the City of Amarillo, Texas.

In testimony whereof, I have caused the seal of said Court to be hereunto affixed at the City of Amarillo, in the Northern District of Texas, this the 16th day of September, A. D. 1941.

(Seal)

GEORGE W. PARKER,
Clerk, United States District Court for the Northern District of Texas.
By MARY K. HARTY,
Deputy.

[fol. 157] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

Argument and Submission

Extract from the Minutes of November 14, 1941

No. 10,066

WARREN-BRADSHAW DRILLING COMPANY,

versus

O. V. HALL, et al.

On this day this cause was called, and, after argument by W. M. Sutton, Esq., and Frank Settle, Esq., for appellant, and Davis Scarborough, Esq., for appellees, was submitted to the Court.

[fol. 158] OPINION OF THE COURT—Filed December 9, 1941

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 10066

WARREN-BRADSHAW DRILLING COMPANY,
Appellant,

versus

O. V. HALL, et al., Appellees

Appeal from the District Court of the United States for the Northern District of Texas

(December 9, 1941)

Before Hutcheson and Holmes, Circuit Judges, and Dawkins, District Judge

HUTCHESON, Circuit Judge:

Another of the growing number of cases brought in this Circuit, by employees under Section 16 (b),[1] of the Fair

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[1] Title 20 U. S. C. A. Sec. 216 (b). "Any employer who violates the provisions of section 206 or section 207 of this chapter shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their un-

[fol. 159] Labor Standards Act of 1938, this suit was to recover for overtime pay. The claim in general was that plaintiffs were engaged in the production of goods for commerce within the meaning of Section 3 (j),[2] of the Act, and that they had worked overtime hours for which they had not been paid. The claim in particular was that defendant was a drilling contractor engaged in the business of drilling oil wells not for itself, but for others with rotary drilling machinery and equipment; that plaintiffs were members of its drilling crews; and that the oil produced and to be produced from said wells, was intended for and did go into commerce as defined in Section 3 (b)[3] of the Act. There were three defenses. One was that defendant and plaintiffs were not engaged in mining or the production, of goods for commerce, because, defendant was a contract driller, having no interest in the oil or its production, and further, the

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paid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action for and in behalf of all employees similarly situated. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action."

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[2] Title 29 U. S. C. A. Sec. 203 (j). "'Produced' means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this chapter an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any process or occupation necessary to the production thereof, in any state."

[3] Title 29 U. S. C. A. Sec. 203 (b). "'Commerce' means trade, commerce, transportation, transmission, communication among the several States or from any State to any place outside thereof."

work it and they did with the rotary drilling rig ceased short of the oil producing horizon, the wells were thereafter drilled in to the horizon and the oil produced with other machinery and equipment. A second defense was that the oil produced did not go into "commerce". Its third defense was: that plaintiffs worked on each well in question as a new job and new employment without any express agreement as to their hourly rate of pay but with the expectation of working eight hours each day, seven days per week, until the rotary drilling on the well should be completed; that there was an implied agreement between the parties that the pay they should receive for the work during the period of the job, should include pay for overtime in compliance with the Fair Labor Standards Act; that the [fol. 160] payment received and accepted by plaintiffs was based on such implied agreement; and that the amount being more than sufficient to cover the minimum of straight and overtime wage requirements of the Act, defendant is not liable to them.

Plaintiffs' testimony established; that they operated rotary drilling tools; that the last thing they did on each well was to set the pipe in the well and then pull the tools; that when they got down to a certain point before they reached the oil producing sand, the casing was set in cement; that they then took out the rotary tools and a new crew came on and drilled the well in. The defendant offered no evidence. The district judge thus summarized the facts: "The defendant was not the owner of any of the leases worked upon. It was simply under contract for such owners to drill the wells. It had nothing whatever to do with the wells, or holes in the ground, other than above indicated. When it finished such work, it would move to another location and commence another well, and so on, * * *". "As a practical matter, in the drilling of these oil wells the defendant used rotary rigs for drilling wells down to, or near to, the pay sand. At that juncture the rotary crews would cement the casing at or near the expected pay sand, and then would withdraw all the rotary machine and another crew would move in and complete the well, bring it in, or demonstrate that it was a dry hole, with cable tools. In other words, plaintiffs here did not do the whole job, but it was finished by the cable tools crew. That is true with respect to every

well on which the plaintiffs worked that is involved in this suit, * * *".

Concluding; that the oil produced and to be produced from the wells plaintiffs worked on, was intended to and did move in "commerce"; that plaintiffs were engaged in the production of goods for commerce; and that they had [fol. 161] worked overtime without being paid one and a half times their regular rate for doing so; he gave plaintiffs judgment.

Appellants here contesting these conclusions, present these points: (1) that workmen engaged in operating a rotary drilling rig as employees of a drilling contractor engaged in drilling wells for others under contract where neither the employer nor employee produced any oil or had any interest in oil that might be thereafter produced are not engaged in the production of goods for commerce within the meaning of the Fair Labor Standards Act of 1938; (2) that plaintiffs did not prove that the oil that might be and that was produced from the wells in question was intended to move and did move in interstate commerce; and (3) that upon the evidence that plaintiffs merely joined themselves to a rotary drilling crew on each well without any express agreement as to wages, and worked eight hours each day, seven days each week, until the rotary drilling on that well was finished, and that the payment he received was in each instance more than sufficient to provide the minimum wage, straight and overtime, required by the Fair Labor Standards Act, it must be held that there was an implied agreement that the wages each was to be paid covered overtime under the Act that he is not entitled to recover.

We cannot agree with appellant on any of its points. The operator of the rotary drilling rig and the members of his crew, if not engaged in mining for and the production of oil, within the meaning of the Act, as actually mining and producing the oil, and we think they were, were certainly engaged in processes or occupations necessary to the production of oil. In the practical operation of the oil business, no one would accept the view that rotary drilling is not a part of the production of oil and that rotary drilling crews are not a part of the field forces actually engaged in its production. Only by the sheerest [fol. 162] quibbling could they be excluded from the operation of laws covering such field forces. It must be conceded:

that some operations in the oil business as a whole and some even in preparation for production, are neither operations in the production of oil, nor processes or occupations necessary for the production thereof; and that an extreme construction of the act, bringing all operation in the oil industry under it, would produce a *reductio ad absurdum*. But this is no argument at all against the conclusion to be drawn here from the undisputed facts that appellant and its employees are engaged generally in mining for and the production of oil in this state, and specifically in a process or occupation the handling of a rotary drilling equipment necessary to the production of oil here. The cases appellant cites are not in conflict with this conclusion, while the numerous decisions cited in the opposing briefs, clearly and fully support this view.

Nor does appellant stand any better on its second point that plaintiffs failed to prove that the oil was intended to move and did move in commerce. It is sufficient without setting it out, to say that the proof, on that score, was abundant.

In presenting and arguing its third point, that the pay plaintiffs received, must, because taken as a whole it exceeds the statutory minimum, be held to include overtime, defendant completely misconceives the statute and the construction given it by this court in *Fleming v. Belo*, 121 F. (2d) 207. The statute does not support, it was not there held that it did support, the view here advanced, that merely because the amount paid an employee exceeds the minimum straight and overtime pay required by the Act, an employer may defend against a suit for overtime. What the statute in effect provides, and what this court has held, is; that overtime must be compensated for at one and one half times the regular rate at which the wage earner [fol. 163] is employed; that that rate may be fixed by agreement; and that if there is no agreement fixing the amount to be paid for regular and overtime work, the regular rate, as to it, may properly be determined by dividing the total pay each week by the total hours worked.

It is clear that plaintiffs performed their work for the company under no express agreement, fixing their regular rate and agreeing that the pay received each week should cover overtime. It is equally clear that they worked on a straight hourly basis and that it was not agreed or contemplated that any of the amount paid was paid for over-

time. If, there could be a case of overtime in wages paid, without an express agreement that overtime was included, and we express no opinion on that, such an agreement certainly cannot be implied here, for such an implication would be in the very teeth of the facts.

Except for the fact that there was error in the allowance to Volgamore, one of the plaintiffs who failed to establish his case, the judgment would be affirmed as rendered. But there was error to the extent of this allowance. Appellees admit the error and consent to a reformation of the judgment by striking out the amount allowed him rather than having the judgment reversed and the cause sent back for trial. The judgment will therefore be reformed by striking out the allowance to Volgamore and as reformed, it will be affirmed.

Reformed and Affirmed.

[fol. 164] JUDGMENT

Extract from the Minutes of December 9th, 1941

No. 10,066

WARREN-BRADSHAW DRILLING COMPANY

versus

O. V. HALL, et al.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Texas, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and the same is hereby, reformed by striking out the allowance to Volgamore; and as so reformed that said judgment be, and it is hereby, affirmed;

It is further ordered and adjudged that the appellant, Warren-Bradshaw Drilling Company, and the surety on the appeal bond herein, Standard Accident Insurance Company, be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

[fol. 165] Motion and Order Staying Mandate—Filed December 23, 1941

In the United States Circuit Court of Appeals for the Fifth Circuit

No. 10066

Warren-Bradshaw Drilling Company, Appellant,

vs.

O. V. Hall, et al., Appellees

Motion and Application for Stay of Mandate and the Execution and Enforcement of Judgment

Now Comes Warren-Bradshaw Drilling Company and moves the Court to enter an order staying and withholding the mandate and the enforcement and execution of judgment, in the above entitled cause, because it is the bona fide intention of said Warren-Bradshaw Drilling Company, within the time provided by law, to make application to the Supreme Court of the United States for a writ of certiorari to review the judgment in this cause.

Warren-Bradshaw Drilling Company, by (Signed) Frank Settle, E. O. Monnet, Sam Clammer, Its Attorneys.

[fol. 166] United States Circuit Court of Appeals for the Fifth District

No. 10,066

Warren-Bradshaw Drilling Company, Appellant,

versus

O. V. Hall, et al., Appellees

On Consideration of the Application of the appellant in the above numbered and entitled cause for a stay of the mandate of this court therein, to enable appellant to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, It Is Ordered that the issue

of the mandate of this court in said cause be and the same is stayed for a period of thirty days; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from the date of this order there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that certiorari petition, and record have been filed, and that due proof of service of notice thereof under Paragraph 3 of Rule 38 of the Supreme Court has been given. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from the date of this order, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

Done at New Orleans, La., this 23rd day of December, 1941.

(Signed) Rufus E. Foster, United States Circuit Judge.

[fol. 167] Clerk's Certificate to foregoing transcript omitted in printing.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed June 8, 1942

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

No. ~~887~~ 21

In the Supreme Court of the United States

October Term, 1941.

WARREN-BRADSHAW DRILLING COMPANY, *Petitioner,*

vs.

O. V. HALL, INDIVIDUALLY, AND AS AGENT OF W. N. SLAID, EDGAR SLAID, E. S. MORGAN, A. D. HARMON, J. M. HUDDLESTON, J. R. MILLER, AND B. R. GRAY,

Respondents.

PETITION FOR WRIT OF *CERTIORARI* TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AND BRIEF AND ARGUMENT IN SUPPORT THEREOF.

FRANK SETTLE,
EUGENE O. MONNET,
SAM CLAMMER,
Attorneys for Petitioner.

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IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1941.

No. .....

WARREN-BRADSHAW DRILLING COMPANY, *Petitioner,*

vs.

O. V. HALL, INDIVIDUALLY, AND AS AGENT OF W. N. SLAID, EDGAR SLAID, E. S. MORGAN, A. D. HARMON, J. M. HUDDLESTON, J. R. MILLER, AND B. R. GRAY, *Respondents.*

PETITION FOR WRIT OF *CERTIORARI* TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

To the Honorable the Supreme Court of the United States:

The petition of Warren-Bradshaw Drilling Company respectfully shows to this Honorable Court:

1. That the case is an action at law brought by the respondents, as plaintiffs, against petitioner, as defendant, in the District Court of the United States for the Northern District of Texas, for the recovery of overtime under the provisions of the Fair Labor Standards Act of 1938, and for liquidated damages and attorney fees. The trial was by

the court without a jury, and the judgment was for the respondents.

2. Petitioner, as appellant, prosecuted an appeal from such judgment to the Circuit Court of Appeals for the Fifth Circuit, which affirmed the judgment of the lower court.

3. The appeal involved a construction of Section 3 (j), Section 7 (a), and Section 16 (b), of the Fair Labor Standards Act, 29 U. S. C. A., 201, *et seq.*, the court holding and deciding:

(a) That the provisions of the act were applicable to the facts in the case, under which petitioner and respondents, as its employees, were held to be engaged in the production of goods for interstate commerce; and

(b) That each of the respondents, although admittedly working under no express agreement as to wages, and receiving as compensation for their work a sum of money far in excess of the minimum statutory amount, with overtime figured at time and a half of the minimum wage prescribed by said act, were nevertheless entitled to receive for all hours worked in excess of forty hours per week at the rate of one and one-half times the rate of pay they did receive.

4. A certified copy of the entire record of said case in the Circuit Court of Appeals for the Fifth Circuit is hereby furnished as an exhibit to this application.

Summary Statement of the Issues and Facts Involved.

1. It is not disputed that petitioner was the owner of rotary drilling equipment and was employed by the owners of oil and gas mining leases in drilling by means of such rotary equipment into the ground to a specified depth;

that when near to the anticipated location of the oil sand, petitioner removed its rig from the premises, and the petitioner's rotary outfit and respondents' employment on the job then ceased; that the well or hole, drilled by petitioner, was thereafter completed by means of cable tools operated by others than the respondents, and which process of deepening the hole with cable tools was expected by the lease owner to determine or demonstrate whether the well so completed was a producer of oil or a dry hole.

2. It is not disputed, in fact, that each job upon which respondents worked constituted a separate employment; that in none of these jobs or employments was there any express agreement between the petitioner and respondents about wages.

3. It is not disputed, as found by the District Court, that "all of them (respondents) drew rather good wages, ranging from around $6.50 to $7.00 and up to as high as $11.00 per day for their work." Each of the respondents accepted payment of compensation without making any claim or demand for overtime, nor did either of them at the time of such payment give any notice that overtime would be claimed. The judgment of the court and the amount thereof is arrived at by determining the number of hours worked by each respondent during each week in excess of forty hours, or forty-two hours, as the case may be, and multiplying such number of hours by a figure representing one and one-half times one-eighth the daily wage received by the employee and then adding thereto the double penalty and attorneys' fees.

Reasons Relied on for the Allowance of *Certiorari*.

The case was decided by the Circuit Court of Appeals contrary to the argument and contention of petitioner, namely:

1. That the act did not apply to the petitioner or to the respondents as its employees, because they were not, upon the admitted facts as herein stated, engaged in commerce, nor in the production of goods for commerce, as said terms are defined by the act, and that the respondents were not therefore entitled to the benefit of said act.

2. That if the act was applicable, the record shows that in each instance the wages paid to the respective respondents was greatly in excess of the basic wage scale and time and a half for overtime, as provided by the act, and that therefore there was no violation of the act, but on the contrary, a compliance therewith.

3. The contrary holding and decision of the Circuit Court of Appeals therefore presents an important question of Federal Law involving the construction and interpretation of the act which has not been, but should be settled by this Honorable Court.

Wherefore, your petitioner respectfully prays that a writ of *certiorari* may be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding the said court to certify and send to this Court, on a day certain therein to be designated, a full and complete transcript of the record, and all the proceedings of the Circuit Court of Appeals for the Fifth Circuit, in the said case, entitled *Warren-Bradshaw Drilling Company, Appellant*, v. *O. V. Hall, et al., Appellees;* No. 10,066, to the end that the said cause may be re-

viewed and determined by this court as provided by law, or that your petitioner may have such other and further relief or remedy in the premises as this Court may deem appropriate, and that the said judgment of the Circuit Court of Appeals in the said case, and every part thereof, may be reversed by this Honorable Court.

WARREN-BRADSHAW DRILLING COMPANY,
Petitioner,

By SAM CLAMMER,
Attorney for Petitioner.

Of Counsel:

FRANK SETTLE,
EUGENE O. MONNET.

BRIEF AND ARGUMENT IN SUPPORT OF PETITION FOR *CERTIORARI*.

The judgment of the District Court is found at pages 141-143 of the record, and the opinion and judgment of the Circuit Court of Appeals, not yet published, is found on pages ..... of the record.

Statement of the Case.

This has already been stated in the preceding petition, which is hereby adopted and made a part of this brief.

Specifications of Error.

1. The Circuit Court of Appeals erred in holding and deciding that the petitioner and respondents came within the provision of the Fair Labor Standards Act upon the ground that respondents, as employees of petitioner, who, under its employment by the owners of oil and gas mining leases, and in the course of prospecting for oil, partially drilled wells with rotary drilling equipment owned by petitioner, and which when later deepened and completed by others than petitioner and respondents, as its employees, to the oil sand, expected or anticipated to be a producing sand, did engage in the production of goods for interstate commerce.

2. The Circuit Court of Appeals erred in holding and deciding that the provisions of Section 7 (a) of the Fair Labor Standards Act were not complied with by the payment of compensation by petitioner to respondents, as its employees, and each of them, of a sum exceeding the statu-

tory amount, with overtime figured at one and one-half times the minimum wage prescribed by said act, although such sums were accepted by respondents without objection, or claim of overtime.

ARGUMENT.

Proposition I.
(Specification of Error 1.)

The Act was not applicable to respondents because petitioner, as their employer, was at no time engaged in the business of mining for or producing oil or gas, or in any process for the production thereof, with the intent, hope or belief that its activities would result in the production of goods for interstate commerce.

It was the contention of the respondents that the drilling operations of petitioner under its employment by lease owners were conducted with the knowledge and in the belief that oil or gas in paying quantities would be produced if the hole drilled by it was later deepened to the oil bearing sand, and that he knew or should have known that the production from such completed well would move in interstate commerce. We do not think the record supports that contention.

It could be assumed, perhaps, that the various oil companies—the employers of the petitioner—engaged in the oil and gas mining business would be expected to be familiar with the particular field or territory in which they were operating, and with the data revealed by certain publications devoted to that subject, and which were called to the court's attention, relating to the productivity of the area, and also with the movement of the oil therefrom in com-

merce. (Petroleum Facts and Figures, Seventh Edition, 1941, p. 80; 39 Oil & Gas Journal, Jan. 30, 1941, 52; Bureau of Mines, Crude Petroleum and Petroleum Products Review 1939 and 1940).

It is difficult, however, to see, and therein we think lies the fallacy of the argument, on what principle petitioner can be charged with such knowledge, so that an intent, hope or expectation on its part that oil would be found, and that if produced it would move in interstate commerce, may be imputed to it. It was not engaged in mining for oil or gas or in the oil business at all. It used its rotary equipment in the same manner as if drilling, let us say, for water. Petitioner was not employed to drill a well, but to bore down to a point in proximity to the anticipated oil sand, and that when it reached that point it stopped (R. 36, 38, 39—Testimony of B. R. Gray, and R. 51—testimony of A. D. Harmon). The trial court found that, "As a practical matter, in the drilling of these oil wells, the defendant (petitioner) used rotary rigs for drilling of the wells down to, or near to, the pay sand. At that juncture the rotary crews would cement the casing at or near the expected pay sand, and then would withdraw all the rotary machine and another crew would move in and complete the well, bring it in, or demonstrate that it was a dry hole, with cable tools." (R.138) What happened after the well was deepened and after petitioner had been paid and its employment had ceased, was none of its concern. It did not know, and could not know, and had no interest in finding out, what the lessee oil company might do, or might determine to do, with respect to going deeper into a lower strata. The fact that oil might be found there, and particularly that if so found it might move in interstate commerce, does not, we

submit, make the transaction in which petitioner was engaged one constituting interstate commerce. That the products might ultimately move in interstate commerce would not bring respondents within the purview of the act.

In Interpretative Bulletin No. 1, published by the Federal Administrator of the Wage and Hour Division, October, 1940, it is so stated. We quote:

> "Employees are engaged in the production of goods for commerce where the employer intends or hopes or has reason to believe that the goods or any unsegregated part of them will move in interstate commerce. If, however, the employer does not intend or hope or have reason to believe that the goods and production will move in interstate commerce, the fact that the goods ultimately do move in interstate commerce would not bring employees engaged in the production of these goods within the purview of the act."

That test has received the approval of this court in *United States* v. *Darby Lumber Company*, 312 U. S. 144, 61 S. Ct. 451, in which it was said that production of goods for commerce as used in the act includes at least production of goods which at the time of production, the employer according to the normal course of his business, intends or expects to move in interstate commerce.

To indulge the presumption, as the court did, that one is presumed to know what he ought to know, merely begs the question. What ought the petitioner to know? It was argued that it was presumed to know, and could not shut its eyes to "the elementary facts of the oil business." But the oil business was not petitioner's business. It could, of course, be presumed that petitioner knew all about the handling and operation of rotary drilling machines because that was its business, and its sole business, but it is going too far

to impute to it the knowledge of another business which may be in a sense, related indirectly to interstate commerce. Of course, every man is presumed to know that which is of such notoriety as to be matter of common knowledge, but the data revealed by the publications referred to, and upon which alone petitioner's knowledge is predicated, cannot be included in that category. It might as well be argued that the driver of a delivery truck for a wholesale grocery establishment should be charged with knowledge of the elementary facts of the grocery business, as to charge petitioner with knowledge of the elementary facts of the oil business. There is no legitimate basis for ascribing to petitioner an intent, expectation or belief that oil or gas would be found in the completed well, or even that the lease owner would determine to complete it, or that, if completed, and oil or gas were found, the same would move in interstate commerce. That interstate commerce might be affected by what petitioner was employed to do does not make the act applicable. The act by its terms is limited to employees engaged in interstate commerce or in the production of goods for interstate commerce. It does not extend to employment that merely affects interstate commerce.

In the bulletin above referred to, and indeed in the decided cases, the word "employer", is referable to the owner of the physical property utilized in the production of goods, and therefore beneficially interested in such production. The petitioner is in no such situation for it had no beneficial interest whatever in the production, and it therefore could hardly be accused of indulging the hope or expectation of production, whether it moved in interstate commerce or not.

It is, of course, the nature of the employee's occupation

that determines whether or not that employer is subject to the act. *Fleming* v. *Kirschbaum*, 38 Fed. Suppl. 204.

In *Gerdert, et al.*, v. *Certified Poultry and Egg Co.*, 38 Fed. Suppl. 964, it was said:

> "The minimum wages and maxium hours provision of the Fair Labor Standards Act relates to employees who are engaged in commerce, or in the production of goods for interstate commerce, but it is difficult to see how an employee could be engaged in commerce unless his employer were likewise engaged, because the employee is merely agent of the employer."

In a footnote to the opinion, the language of Senator Pepper, a member of the Conference Committee which drafted the act, he states as follows:

> "I want it distinctly understood that this proposed law * * * is applicable only to those employees who themselves are engaged either in interstate commerce, or the production of goods for interstate commerce."

In *National Labor Relations Board*, v. *Jones and McLaughlin Steel Corp.*, 301 U. S. 1, 81 L. Ed. 893, it is said:

> "Although activities may be intrastate in character when separately considered, if they have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions, Congress cannot be denied the power to exercise that control."

But it was further said:

> "The scope of the power of Congress over interstate commerce may not be so extended as to embrace effects upon interstate commerce so indirect and remote that to embrace them would effectually obliterate the distinction between what is national and what is local and create a complete centralized government."

Petitioner's empoyment, and his job under that employment was a purely local activity. The act therefore does not apply, unless it can be said that there was such a close and substantial relation between that activity and interstate commerce; that petitioner itself was, in respect to such activity, motivated by the belief, hope, expectation or intention to produce goods for interstate commerce. We submit that such belief, hope or intention cannot be fairly imputed to petitioner or to respondents as its employees. Indeed, we think it will be evident from the discussion under Proposition II that neither of the parties considered that they came within the act.

Proposition II.
(Specification of Error No. 2.)

A. Where a laborer is employed on a job without an express agreement as to wages, but expecting to be paid a weekly wage of a certain sum based upon an eight-hour day until the job is finished, and he accepts such amount in full satisfaction, and such payment is more than sufficient in amount to cover the minimum and overtime wage scale provided in the Fair Labor Standards Act, an agreement will be implied for a basic and overtime wage scale in compliance with the act; and

B. That the acceptance by respondents of the compensation tendered by petitioner, as their employer, and accepted by them without objection, claim, or demand for an additional amount for overtime, and without notice that a claim for overtime will be made or presented should not subject petitioner to the penalty of double overtime.

A

The evidence here is that each well worked upon by the respondents was a separate independent job. In so far as there was evidence as to how the respondents went to work, it appears that they merely joined themselves to a rotary drilling crew without any express agreement as to wages. Each of them had in his mind that he would work eight hours each day, seven days per week, until the rotary drilling on that well was finished, and he expected to be paid a certain amount for his labor on the well. (R. 58) He was paid for his work in accordance with that expectation, and the payment he received was in each instance more than sufficient to provide for a basic wage scale and time and a half for overtime as provided by the Fair Labor Standards Act.

It was definitely held in *Fleming, Admr.*, v. *A. H. Belo Corporation*, 121 F. (2d) 207, that the Fair Labor Standards Act was not intended to and did not create a prohibition against or limitation upon working extra hours, and that the act was designed primarily, as its very title indicates, to establish and maintain a fair minimum wage throughout the Nation as to industry engaged in commerce or in the production of goods for commerce. Under authority of that case, the petitioner here could have made an express agreement with the respondents for a wage scale that would have paid them very much less than they did receive from the petitioner for their labor. If the petitioner had not paid the respondents when their work was performed, without agreement as to wages, the respondents would have had a legal right to recover from the petitioner only upon the ground of an implied contract. In such an action, what amount could they have recovered? Certainly not more than they themselves expected when they performed the work. They

have received that amount under their own testimony and in full satisfaction of what they claimed at the time. Now they are claiming in this suit an additional amount, plus penalty and attorney's fees, on the ground of an alleged violation of the Fair Labor Standards Act.

We earnestly insist that since this action is necessarily based upon an implied contract, the implication can and must be that the contract was not in violation of the law, but in compliance therewith.

It is an established rule of law that "a promise will not be implied where an express promise would be contrary to law." 12 Am. Juris. 500.

In *Duphy* v. *Ryan*, 116 U. S. 491, 29 L. ed. 703, 6 S. Ct. 486, the Supreme Court said:

> "The law implies a contract only to do that which the party is legally bound to perform."

So, on this point, we say that if the occupation of petitioner in drilling wells should be considered the production of goods for commerce, and if it be held that the respondents were engaged in the production of goods for commerce, we respectfully submit that there is no violation here of the Fair Labor Standards Act, for the payment which the respondents each received for his labor was, under the implied agreement, more than amply sufficient to constitute full compliance with the provisions and requirements of the act.

B.

Aside from the foregoing discussion, and as we pointed out, the respondents, at the time they were paid, expressed no dissatisfaction with such payment tendered to each of them, as their compensation in full, nor made any

demand for additional pay for overtime, nor accepted their wages upon the condition that payment of overtime would be later paid to them, nor gave notice at the time of payment that they would hold petitioner liable for overtime. This, we submit, is not fair dealing on their part, with petitioner, and should preclude them from asserting, long afterwards, that petitioner is liable for the penalty prescribed by the act, for of course such provision of the statute should be strictly construed.

Take, for illustration, the case of W. M. Slaid, one of the respondents, who received and expected to receive $11.00 a day for seven days per week, or seven tours. How long a period in all he worked, we are not advised, but the pay checks received by him from petitioner were on the basis of $77.00 per week of seven days. How much overtime he worked, or what period is covered by his overtime, or indeed by any of the respondents, the record fails to show. The court, however, allowed him $379.50 for overtime on the basis of eleven dollars per day at $1.375 per hour, and to which was added the penalty of double the amount of overtime, in all $759.00. (R.142) His silence with respect to overtime, and his failure to demand it during the whole period of his employment, when he received his pay checks raises a strong presumption that both parties understood that such payment would be the entire compensation coming to him in compliance with the act. There is only one instance of an employee of petitioner making a claim of overtime. R. E. S. Morgan (R. 90) says he demanded it on December 22, 1940. As he worked from January, 1939, to September, 1940, (R. 90) such demand was three months after his employment had ceased, long after he had been paid his compensation in full, and had accepted it, like his co-employees, without

anything being said about overtime. This demand was clearly an afterthought and negatives an intention to claim overtime when he received his last pay check three months before.

If we cannot imply an agreement that the payments to respondents were in full of their entire compensation, then the petitioner, as their employer, was deceived and misled to its injury by their silence as to any claim of overtime and their acquiescence in the payment made. Had it not been so deceived and misled, it could, and probably would, either have reduced their wage, or have continued his wage of $77.00 per week with the express understanding and agreement that it would cover overtime, if any, each week. The same of course applies to each of the respondents.

We submit that under the facts of this case the judgment rendered against petitioner for $4,792.94, for violation of the Fair Labor Standards Act is unjust and should be reversed.

Respectfully submitted,

FRANK SETTLE,
EUGENE O. MONNET,
SAM CLAMMER,
Attorneys for Petitioner.

No. 21

In the Supreme Court of the United States

October Term, 1942.

WARREN-BRADSHAW DRILLING COMPANY, *Petitioner,*

vs.

O. V. HALL, INDIVIDUALLY, AND AS AGENT OF W. N. SLAID, EDGAR SLAID, E. S. MORGAN, A. D. HARMON, J. M. HUDDLESTON, J. R. MILLER, AND B. R. GRAY, *Respondents.*

BRIEF OF PETITIONER.

FRANK SETTLE,
EUGENE O. MONNET,
SAM CLAMMER,
Tulsa, Oklahoma,
Attorneys for Petitioner.

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IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1942.

No. 21

WARREN-BRADSHAW DRILLING COMPANY, *Petitioner,*

vs.

O. V. HALL, INDIVIDUALLY, AND AS AGENT OF W. N. SLAID, EDGAR SLAID, E. S. MORGAN, A. D. HARMON, J. M. HUDDLESTON, J. R. MILLER, AND B. R. GRAY, *Respondents.*

BRIEF OF PETITIONER.

The controversy between the parties arises out of the provisions of the Fair Labor Standards Act of 1938, involving particularly Sections 3 (j), 6 and 7 (a), set out in the appendix.

Statement of the Case.

On February 3, 1941, the respondents, as plaintiffs therein, instituted an action in the United States District Court for the Northern District of Texas, Amarillo Division, for the recovery of $4,667.56, as overtime for work done as employees of the petitioner, the plaintiffs alleging that they were all engaged in the production of goods for commerce, namely "in drilling wells for oil and gas during the time that these claimants were working in Moore, Hutchinson, Gray and Carson Counties in the State of Texas."

The answer of defendant, Warren-Bradshaw Drilling Company, denied that the plaintiffs worked for the defendant in any capacity which constituted interstate commerce, and further denied that the plaintiffs had ever performed any work or labor for the defendant for which they had not been fully paid, and denied that it was indebted to the plaintiffs, or either of them, in any sum whatever.

The case was tried to the court without a jury, which rendered a judgment that plaintiffs recover from the defendant, Warren-Bradshaw Drilling Company, as follows, to-wit:

Kenneth Volgamore	$112.40
O. V. Hall	602.00
W. N. Slaid	759.00
Edgar Slaid	396.50
E. S. Morgan	614.00
A. D. Harmon	554.04
J. M. Huddleston	544.00
J. R. Miller	373.00
B. R. Gray	338.00

(R. 141).

Petitioner prosecuted an appeal from the judgment of the District Court to the Circuit Court of Appeals for the Fifth Circuit, which affirmed the judgment of the lower court except for the amount allowed one claimant. Petitioner filed its petition for a writ of *certiorari*, which was granted by this court on June 8, 1942.

The opinion of the Circuit Court of Appeals will be found in the printed transcript (R. 157-162).

The District Court made no findings of fact as required by Rule 52-A of the Rules of Civil Procedure, which rule was held mandatory by this court in *Interstate Circuit* v. *United*

States, 304 U. S. 55, construing Equity Rule 70½ of like import.

The following are the pertinent and controlling facts in the case: that petitioner is the owner of rotary drilling equipment, and is an independent contractor engaged under contract with an oil and gas lessee to do a certain job, namely, to drill, by means of such rotary equipment, into the strata of the earth to a prescribed depth, upon the completion of which its contract was performed, and it thereupon removed from the leased premises its rig, either for storage or for further like employment; that the oil and gas lessee then might, if it saw fit, drill deeper into the strata, with cable tools, with the view of demonstrating whether oil or gas is present in that location; that respondents, as employees of petitioner, expected, when employed, to work, fifty-six hours and no more per week, at wages ranging from $6.50 to $11.00 per day, according to the kind of work performed, and which amounts were paid to them semi-monthly during the whole time they worked for the petitioner, and that they accepted such wages without protest or objection, claiming no additional compensation, and without notice to petitioner of any reservation of a claim therefor as overtime work; and no such claim was made until after their employment had ceased. As the facts stated will not, we believe, be disputed, we have not thought it necessary to refer to the pages of the record.

The points or propositions upon which petitioner relies for reversal are:

I.

A. That the provisions of the Fair Labor Standards Act were not applicable because petitioner, as their employer, was not, and cannot be presumed, upon the facts, to have

been, engaged in the business of mining for or producing oil or gas, or in any process for the production thereof, with the intent, hope, expectation or belief that its activities would result in the production of goods for interstate commerce.

B. That even if it can be said that petitioner in performing its contract with the oil company lessee, was motivated by the intent, hope or expectation that oil would be produced by the lessee after its contract with it was completed, respondents have failed to show by any substantial evidence that oil produced from the leaseholds on which they worked went into interstate commerce.

II.

That if the act is applicable, it has not been violated, but has been substantially complied with by the assurance to respondents, according to their own expectations at the time of their employment, of wages ranging from $45.50 to $77.00 per week of fifty-six hours, and that their unconditional acceptance of their pay checks for such amounts, over a long period of time, without claim and without notice to their employer that claim would be made for more, should estop them from asserting, after their employment had ceased, that such wages were not in full of their compensation, and that they were entitled to additional compensation for overtime.

ARGUMENT.

I-A.

It was the contention of respondents that the operations of petitioner, their employer, under its contract with the lease owner, were conducted with the knowledge, and the belief, hope or expectation that oil would be produced in the event that the hole drilled by the petitioner was later deepened and made a producing well by others with whom they had no contract relations, and that petitioner knew, or should have known, that if oil was produced after the petitioner's contract had been completed, that the same would move in interstate commerce. We do not think the record supports that contention. It is difficult to see on what ground it may be fairly assumed that petitioner in performing its contract with the lease-owner, did so with the intent, hope or expectation that oil or gas would be found and would ultimately move in interstate commerce; and that such intent, hope or expectation can be imputed to it. The fact that oil might ultimately be found, and particularly that if so found; it might move in interestate commerce, does not, we submit, make the transaction in which petitioner was engaged, one constituting interstate commerce.

In Interpretative Bulletin No. 5, published by the Federal Administrator of the Wage and Hour Division, 1940 Wage and Hour Manual, page 131, it is stated that,

> "Employees are engaged in the production of goods for commerce where the employer intends or hopes or has reason to believe that the goods or any unsegregated part of them will move in interstate commerce. If, however, the employer does not intend or hope or have reason to believe that the goods and production

> will move in interstate commerce, the fact that the goods ultimately do move in interstate commerce would not bring employees engaged in the production of these goods within the purview of the act."

That test has received the approval of this court in *United States* v. *Darby Lumber Company*, 312 U. S. 100, 61 S. Ct. 451, in which it was said that production of goods for commerce as used in the act includes at least production of goods which at the time of production the employer, according to the normal course of his business, intends or expects to move in interstate commerce.

To indulge the presumption, as was done in this case, that one is presumed to know what he ought to know, merely begs the question. What ought the petitioner to know? There is nothing in this record upon which to base that presumption. In *Fleming* v. *Enterprise Box Company*, 37 Fed. Supp. 331, the court observed,

> "It seems safe to say that one is charged with knowing what he should have known."

In that case the Box Company was engaged in manufacturing boxes for cigars, including labels; the cigar boxes were produced from raw materials and transported in interstate commerce from states other than Florida. Substantially all of the boxes were produced for interstate commerce. In justification of the statement that the Enterprise Box Company should be charged with knowing what it should have known, the court called attention to the fact that the president of the Box Company had been, for many years, engaged as an employee in the manufacture of cigars in Florida, and that for many years he was the executive head of the defendant company in the manufacture and sale of cigar boxes, and also called attention to the fact, shown by

the evidence, that he manufactured boxes with labels of Clubs domiciled in other states, and other boxes with the names and domiciles of distributors in other states, concluding, "he therefore is presumed to have had more than the general knowledge of cigars and the cigar box business. He must have known that the cigar industry in Tampa, for a great many years, has been one of the prime industries of Tampa, and that many millions of cigars are manufactured annually in Tampa and sold throughout the greater part of the United States." There is no evidence in the record in this case upon which to indulge a similar presumption.

It was argued below that petitioner was presumed to know, and could not shut its eyes to, "the elementary facts of the oil business." But the oil business was not petitioner's business and we cannot, upon the facts disclosed in this record, impute to it the knowledge of another business.

In the bulletin above referred to, and indeed in the decided cases, the word "employer" is referable to the owner of physical property utilized in the production of goods, and beneficially interested in such production. The petitioner is in no such situation, for it had no beneficial interest whatever in the production of oil, and therefore can hardly be accused of indulging the hope or expectation of production, whether it moved in interstate commerce or not.

It is, of course, the nature of the employee's occupation that determines whether or not his employer is subject to the act. *Fleming* v. *Kirschbaum*, 38 Fed. Supp. 204.

In *Gerdert, et al.*, v. *Certified Poultry and Egg Co.*, 38 Fed. Supp. 964, it was said:

> "The minimum wages and maximum hours provision of the Fair Labor Standards Act relates to employees who are engaged in commerce, or in the produc-

tion of goods for interstate commerce, but it is difficult to see how an employee could be engaged in commerce unless his employer were likewise engaged, because the employee is merely agent of the employer."

In a footnote to the opinion, the language of Senator Pepper, a member of the Conference Committee which drafted the act, is quoted as follows:

> "I want it distinctly understood that this proposed law * * * is applicable only to those employees who themselves are engaged either in interstate commerce, or the production of goods for interstate commerce."

In *National Labor Relations Board* v. *Jones and McLaughlin Steel Corp.*, 301 U. S. 1, 81 L. ed. 893, it is said:

> "Although activities may be intrastate in character when separately considered, if they have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions, Congress cannot be denied the power to exercise that control."

But it was further said:

> "The scope of the power of Congress over interstate commerce may not be so extended as to embrace effects upon interstate commerce so indirect and remote that to embrace them would effectually obliterate the distinction between what is national and what is local and create a complete centralized government."

I-B.

We may concede that oil produced from wells is, generally, sold and delivered to the pipe line of the purchaser, but where is the proof of respondents' claim that they were all engaged in the production of goods for interstate com-

merce? Where is the proof as to who was the purchaser of the oil produced by the various oil and gas lessees with whom petitioner had contracts, and where is the proof that it was taken out of the State of Texas? That burden rested upon the claimants under the allegations of the complaint. They attempted, but failed to discharge it.

Mr. Bob Huff, Deputy Supervisor of the Texas Railroad Commission, testified as to the practice and requirements relative to pipe line connections and that before oil can be delivered to a pipe line certain procedure had to be followed, and that the Commission issues tenders for crude oil to go out of the state (R. 30). He made reference to Humble Oil and Refining Company which has a refinery at Bay City, Texas, and that "the Humble crude is tendered to the pipe line in Bay City, Texas."

Q. "You know they have a big refinery at Bay City?

A. Yes, sir. What goes with that lube and gasoline and by-products from there would be hearsay as far as I could testify. Might go to New York, and might go to Texas.

Q. In your business you don't keep up the percentage of crude that goes in the pipe line that is manufactured into other products?

A. We would know, if manfactured into other products, but wouldn't know what percentage went out of the state, or even foreign countries." (R. 81)

He also testified with reference to the "Standish," the "Magnolia," "Danciger," and "Panhandle Eastern Line," (R. 82-83) but there is no evidence that either of the respondents worked on any lease owned by either of those companies or that any oil was delivered to them. The Panhandle Eastern Pipeline Company is, apparently, also a producer of oil, but the witness testified:

"The only gas well I see on this list is Panhandle Sneed. I guess that is it and 24 Panhandle Eastern Line goes east. I think that their probable purchaser is Detroit and Indianapolis." (R. 83-84)

But of respondents, only O. V. Hall (R. 15), A. D. Harmon (R. 19), and J. M. Huddleston (R. 20), worked for petitioner on the Sneed lease. The witness testified that this was a gas well.

Harry W. Ferguson, an employee of Humble Oil and Refining Company, testified that some oil produced in Moore, Hutchinson, Gray and Carson Counties, was delivered to Humble Pipeline Company and delivered to the Baytown Refinery, and that approximately ninety to ninety-five per cent of that refining company's crude in the form of refined products was moved out of the state during the period of October 24, 1938, to January 1, 1941 (R. 105).

George Sheppard, comptroller of Public Accounts, State of Texas, testified that the monthly report filed by the distributor, Humble Oil and Refining Company, on the 20th of each month, for the preceding calendar month, shows the total gallons of motor fuel (gasoline) sold in export, interstate commerce, intrastate commerce, and sales to the Federal Government; and that Humble Pipe Line Company had not reported any sales of gasoline or motor fuel. The witness introduced a schedule showing the monthly reports filed by the Humble Oil and Refining Company showing sales of motor fuel (gasoline) for a period from October 1, 1938, to May 31, 1941, (R. 109) and testified:

"The Humble Oil & Refining Company do not report sales from their Baytown plant separately from their other plants."

The foregoing is the substance of all of the evidence relating to the disposition of oil produced from the leases on which the respondents worked. It seems to have been merely presumed that since "some" of the oil from wells in Moore, Hutchinson, Gray and Carson Counties was delivered to the Humble Company's pipe line, and that since respondents worked on some leases in those counties, therefore some of the oil from the leases on which respondents worked must have been delivered to the Humble Refining Company's refinery at Bay City, Texas—although apparently they had other refineries—and that some part of that oil was shipped out of the state.

II.

The respondents were employed and paid, not by the hour, but by the day, and, as we have heretofore shown, they voluntarily went to work, expecting to work fifty-six hours per week for a certain daily wage which they received and accepted, without protest or objection that they had not been fully paid, and without any claim or notice of claim that they expected additional compensation.

Take, for illustration, the case of W. N. Slaid, one of the respondents, who received and said he expected to receive $11.00 per day (called tour in oil field language) for seven days or fifty-six hours per week. (R. 59) The court allowed him $379.50 for overtime on the basis of $11.00 per day at $1.375 per hour, and to which was added the penalty of double the amount of overtime, in all $759.00. (R. 142) His silence with respect to overtime, and his failure to demand it during the whole period of his employment, when he received his pay checks, raises a strong presumption that both parties understood that such payment would be the

entire compensation coming to him in compliance with the act. The situation is substantially the same with respect to the other respondents. (R. 51, 61, 70 and 71)

In *Walling, et al.*, v. *A. H. Belo Corporation*, decided by this court, June 8, 1942, an agreement between the company and its employees, operated to secure to its employees the same wages paid to them before the effective date of the act, was upheld, the court saying that the act "does not bar employer from contracting with employees to pay them the same wages they previously received, so long as the new rate equals or exceeds the statutory minimum wage."

Petitioner, if it had been advised by its employees, or if it had been intimated by them, upon receipt of their first pay check, that it did not reflect payment in full of their work and that more was due them for time in excess of the statutory minimum hours, and had demanded payment thereof, could have terminated the employment from that time, or it could have retained or re-employed them, upon the terms of an express agreement, or mutual understanding, whereby the "straight" time or basic wage might be fixed at a minimum, and overtime at a sum one and one-half times the straight time so that the two together would equal the wage actually paid, and expected to be paid.

If respondents had the thought in their minds to continue the receipt of the wages expected for fifty-six hours' work so long as they were employed, but concealed from petitioner until their employment had ceased, the intent and purpose to claim overtime, surely there is nothing in the act compelling a court to sanction such unfair dealing with, and deception upon, their employer, and rewarding them for their duplicity by giving them double the amount

of wages for overtime; and they should be estopped from asserting such claim.

The action instituted by the respondents is, of course, predicated on the relation of employer and employee, and necessarily assumes some contract, agreement, or mutual understanding of the parties as its inception. We concede that there was no express or formal contract, either oral or in writing, between petitioner and its employees, but may not such an agreement be implied or presumed from the facts disclosed by the record? It is not at all difficult to gather from the record the elements of an offer, or proposal, and its acceptance, from which all contracts spring. Either the petitioner, in substance and effect, offered or proposed to respondents, as its employees, to work for it at so much per day on the basis of fifty-six hours a week, which they accepted, by entering the employment, continuing in it, working fifty-six hours a week and unconditionally accepting compensation of the said respective sums, without claim for more; or respondents made a like offer to petitioner, which it accepted by putting them to work, continuing in it, and paying them according to what they expected, at the time of the employment, to receive.

Since respondents as well as petitioner are charged with knowledge of the law, they must be presumed to have entered the employment knowing that fifty-six hours a week was twelve hours in excess of the statutory maximum for the first year of the act and fourteen hours for the second year, and that compensation for overtime was one and one-half times what we may call "straight time." As they expected to be paid, respectively, no more than $45.50, $49.00 and $77.00 for a week of fifty-six hours and made no claim for more, it can and should be assumed that they would and did

adjust the total wage to conform to the act by alloting part of the pay as straight time and part as overtime. Take for illustration the employee who was paid $7.00 a day, or $49.00 per week. For the first year of the act the hours would be twelve hours over the forty-four hours' maximum. Time and a half for the twelve hours would be the equivalent, for the purpose of computing compensation, of eighteen hours in excess of the maximum, or an average of $.79 per hour for sixty-two hours' work. Practically the same result is reached relative to the second year of the act.

It has been stated that one of the objects of the act was to encourage and promote the spread of work so that more people might be employed. While the record does not affirmatively so show, it is a known fact, and respondents know it probably better than anyone, that many workers prefer to work overtime in order to get the enhanced pay, and will quit employers who do not work men overtime and seek employment with others who do. That is natural. But there was no such temptation on the part of petitioner's employees, for they were getting as much, if not more than they would get elsewhere, including overtime work. It is fair to assume that this consideration, together with the fact, which we must recognize, that the amount of necessary overtime is dependent upon contingencies not readily foreseen, actuated the respondents in their preference for the system which eliminated the uncertainty of overtime work, and which assured them of unusally good wages upon which they could rely. The observation of this court in the *Bell* case, *supra*, relative to employees of a newspaper, is, we think, pertinent and applicable here. The court said:

> "Many such employees value the security of a regular weekly income. They want to operate on a family

budget, to make commitments for payments on homes and automobiles and insurance. Congress has said nothing to prevent this desirable objective. This court should not."

We, therefore, respectfully submit, for the reasons stated, that the judgment should be reversed.

Respectfully submitted,

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Attorneys for Petitioner.

APPENDIX.

Section 3(j);

"Produced" means produced, manufactured, mined, handled, or in any other manner worked on in any state; and for the purposes of this act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any process or occupation necessary to the production thereof, in any state.

Section 6:

(a) Every employer shall pay to each of his employees who is engaged in commerce or in the production of goods for commerce wages at the following rates—

(1) During the first year from the effective date of this section, not less than 25 cents an hour,

(2) During the next six years from such date, not less than 30 cents an hour,

(3) After the expiration of seven years from such

date, not less than 40 cents an hour, or the rate (not less than 30 cents an hour) prescribed in the applicable order of the administrator issued under Section 8, whichever is lower, and

(4) At any time after the effective date of this section, not less than the rate (not in excess of 40 cents an hour) prescribed in the applicable order of the administrator issued under Section 8.

(b) This section shall take effect upon the expiration of one hundred and twenty days from the date of enactment of this act.

Section 7:

(a) No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce—

(1) For a workweek longer than forty-four hours during the first year from the effective date of this section.

(2) For a workweek longer than forty-two hours during the second year from such date, or

(3) For a workweek longer than forty hours after the expiration of the second year from such date,

Unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942.

No. 21.

WARREN-BRADSHAW DRILLING COMPANY, PETITIONER,

VS.

O. V. HALL, INDIVIDUALLY, AND AS AGENT OF W. N. SLAID, EDGAR SLAID, E. S. MORGAN, A. D. HARMON, J. M. HUDDLESTON, J. R. MILLER AND B. R. GRAY, RESPONDENTS.

BRIEF FOR RESPONDENTS.

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To the Honorable Supreme Court of the United States:

STATEMENT OF ISSUES.

This case originated under the Fair Labor Standards Act. The question for decision is, do rotary drillers in the oil field working for an independent contractor, whose job it is to drill the well down to the producing strata but not into it, come within the protection of this act? The act applies to "employees engaged in interstate commerce or in the production of goods for interstate commerce." This case does not come within the first provision, but

it is our contention that these employees do come within Section 3-J of the act, which provides, "*Produced* means produced, manufactured, mined, handled, or in any other manner worked on in any state."

We think under all the authorities it is agreed that oil is a mineral, and producing oil is mining. Summers Oil & Gas, Section 135. In order to determine the answer to the question here, it is necessary to consider the particular business in which these people were engaged.

The point is urged here that because the petitioner was an independent contractor that the act would not apply. If that were true, the entire purpose of the act would be defeated by having all of the work done by independent contractors who would not have to respect the act.

STATEMENT OF FACTS.

Warren-Bradshaw Drilling Company was an oil well drilling contractor. It drilled oil wells for others in proven areas. Its manager knew the depth of the oil producing strata. It used a rotary rig to drill down to within a few feet of the oil producing strata then the rotary tools were pulled out and cable tools were installed and used to complete the hole. The appellees were all employed in the operation of the rotary tools.

The appellees were paid a regular daily wage, regardless of how many days per week they worked. Some weeks they worked less than the minimum hours and sometimes more. They were paid no over-time (R. 42, 47, 49, 53, and 58). In fact, there was no dispute on that phase of the case. The employer tried to keep the rotary running continuously. The employer used three shifts or tours per 24 hours and none of these

appellees worked more than 8 hours on any day but did work different numbers of days per week. When the machine was in operation they worked seven days per week. If the job was finished after they had worked one day in the week, they were paid the same daily wage as when they worked seven days per week. Over-time was never taken into consideration in calculating their pay.

The proof was undisputed that every well drilled by appellees was a producer (R. middle page 78). Eighty-five percent of the production moved in commerce (R. 109).

Some light is shed on this question by a consideration of the two methods used to drill these wells. A rotary drilling rig mainly consists of a rotating cutting edge called a bit, attached to a hollow drill stem, to which power is applied on the derrick floor and which is lengthened as the depth requires. Water under pressure flows down through the drill stem and up around it to the surface, bringing the drill cuttings. An advantage is the use of less casing, as the process seals off water with a mud wall. It is also a quicker and cheaper method in some formations. A disadvantage is that it may seal off the oil or drive it away from the hole.

The standard cable tool drilling rig utilizes a heavy bit suspended by a steel cable, which by raising and dropping the bit pulverizes the material in the bottom of the hole, and mixes it with water, which is removed from the hole by a bailer. The method is often slower. It may require a separate string of pipe from the surface to each water sand. But it does not seal off nor drive back the oil and is therefore preferred in wildcatting and in "drilling in" wells otherwise drilled by rotary rigs.

FIRST COUNTER-PROPOSITION.

The classification of a particular job in any industry is usually known by the classification given that job by the industry itself.

Statement and Argument.

The petitioner has presented two propositions. Its second proposition is that it paid what it should have paid. Your decision in paragraphs 13 and 14, *Overnight Motor Transportation Company vs. Missel*, expressly approved the decision of the Circuit Court of Appeals in this case on that question. We assume the Missel case settles that question in this court. We will therefore address our remarks to his proposition I.

You will take judicial notice of the method of handling the oil business by the industry. The oil companies divide the business into three branches and usually operate under three separate corporations. As an illustration, the Gulf Production Company, the Gulf Pipe Line Company and the Gulf Refining Company. The production company produces the oil and stores it on the lease. The pipe line company receives the oil at the storage tanks and transports it to the refineries. The refining company manufactures it. Every man who is employed and who produces oil is employed by the production company. Beginning with the digging of the slush pit all the way through the completion of the well, including the pumper who turns the oil into the storage tank, every employee is employed by the production company. If the petitioner's position in this case is correct, nobody in the production department would be engaged in commerce. The pumpers, if a flowing well, only open a valve and the oil flows into the line to a storage tank on the

lease. If the well is a pumper, the operator throws a switch and the pump starts and the oil flows into the line to a storage tank on the lease. When the oil has been put into the storage tank on the lease, it is then measured and turned over to the pipe line company for transportation and the pipe line pumper opens another valve and the oil is in commerce. Under our theory, every employee who has anything to do with the work of actually producing the oil, from digging the slush pit to and including the pumper who puts the oil in the storage tank, is engaged in the production of goods for commerce. In other words, oil cannot be produced without a derrick; oil cannot be produced without drilling the hole down to the production strata; and oil cannot be produced without setting a string of casing just above the production. If the drilling of the well down to the strata by the rotary is not within the statute, the casing crew that sets and cements the casing on top of the producing strata and has nothing further to do with the well, is not within the act. Neither would the crew that used the cable tools to drill in the well be within the act. The cable tool crew discovers but does not produce the oil. When oil is discovered, the well is shut in. No one in the production department would be under this statute.

The petitioner refers to dry holes that might be drilled by the rotary. The truth is that, rotary tools are rarely used for wildcatting in West Texas. The reason for that is that a rotary rig will mud off ordinary production, and it is with great difficulty that a real test of any area can be made with a rotary. Nearly all wildcat wells are drilled with cable tools. The reason for that is that the cable tools do not mud off production, and if production is encountered the operator will know about

it, whereas he might not know if he were using a rotary. The great majority of the wells drilled by a rotary do produce oil because the rotaries are used in proven areas to drill down to a specific depth, and there the well is stopped, pipe set and cemented, and a cable tool rig is set; and then the hole is drilled into the formation from which the oil is produced and the well shut in. We are giving you this information because probably not many members of the court have had any experience in drilling oil wells. Lawyers usually invest their money in dry holes.

The record, page 109, disclosed that eight-five percent or more of the oil moved in interstate commerce. The defendant's position was aptly stated by the trial court in the opening statement:

> "The Court: Then as I understand, your defense consists in the fact that Warren Bradshaw is just a contractor; that is really what it amounts to?
>
> "Mr. Settle: Yes, sir.
>
> "The Court: Wells, that if it had been drilling wells for yourself you concede that you would have been liable, if you produced oil?
>
> "Mr. Settle: Yes, sir. We also contend that, even though defendant wasn't subject to the requirements of the act, they did comply with the requirements of the act in that they paid these particular employees and all others far above the requirements of the act.
>
> "The Court: That is, if it be distributed over that period?
>
> "Mr. Settle: Yes, sir. In other words, that the act is a minimum wage act, and that they were paid far above the minimum wage requirements" (R. 13).

In other words, the defendant in this case has taken the position, because it was drilling these wells for someone else, that that relieved it from complying with the Fair Labor Standards Act. It is the contention of the plaintiffs that it makes no difference whether the original producer is the one who sends the oil across the state line or whether independent contractors intervene. The test, in our opinion, is whether the workman is engaged in producing goods that, when produced, were produced with the intention that such goods would move in commerce.

SECOND COUNTER-PROPOSITION.

Employees are engaged in the production of goods for commerce where the owner intends or hopes or has reason to believe that the goods or any unsegregated part of them will move in interstate commerce.

Argument.

The test is, did the owner contemplate that the oil produced would move in commerce? We must keep in mind that the owner of the lease in one general operation drilled the wells and moved the oil in commerce. In order to get away from this act it is contended here by the petitioner that the intent of the independent contractor is controlling. The independent contractor could have no interest in the result of drilling the well. It was only the owner who was interested. In support of its contention that the independent contractor's intent would be controlling, a bulletin issued by the administrator is cited as authority, as well as the case of *Darby Lumber Company*, 312 U. S. 100. The petitioner insists that under this authority that the intention of the employer, the in-

dependent contractor, controls. The statute justifies no such conclusion. In the administrator's bulletin and in the Darby case the word "employer" was used synonymously with the word "owner." It is the act of producing the goods for commerce that is within the statute. If some segregated part of the work is done by an independent contractor it could in no way affect the ultimate purpose of the owner and it would be the intent of the owner that would control. The best evidence that the owner intended and believed that he would produce oil was the fact that he drilled the wells and paid the costs of the drilling, together with the result, which shows at page 78 of the record, that every well was a producer—one gasser and the balance oil, and the best evidence of the intention of the owner with respect to whether the goods were to be produced for commerce lies in the fact that eight-five percent of his available market was within interstate commerce provided for by pipe lines and interstate facilities, and plus the further fact that this oil actually went into interstate commerce.

This is not a case where the respective jobs are handled by separate owners and ultimately wind up in commerce, but it is one project under one ownership for one purpose and one conclusion and handled merely for convenience through so-called independent contractors who performed the several tasks assigned them by the owner for the common purpose.

This is not a case of an independent contractor in the sense that it is a completed independent undertaking, but it is a series of delegated tasks making up one project under the control of the owner.

That the owner intended for the goods to move in commerce is not open to question. He spent his money in order to produce oil, eighty-five per cent, of which he knew he would move in commerce. Every well drilled by the respondents was a producer, one gas well, all the others oil wells (R. 78). The operator knew that most all of the wells would produce in a proven area such as was involved here.

These operators expect every well they drill to produce. They also know that Texas produces one-third of the oil that is produced in these United States. Probably the greatest gas field in the world is in this immediate territory. The gas that is consumed in Kansas City and Chicago and intervening points comes from this field. The testimony of the Railroad Commission showed that eighty-five percent of all Texas oil moved in commerce. These drillers and everybody connected with this transaction knew that the oil fields of Texas supplied the demands of a large part of the world for petroleum products. Today our government has promoted and financed the building of the biggest pipe line in the world from the East Texas oil fields to Illinois. Right here in the city of Washington the people are limited in the use of gasoline. This twenty-four inch line will largely relieve that situation.

We think the statute itself answers the argument that the independent contract does only a part of the job and therefore not within the act, wherein the statute reads:

> "(j) 'Produced' means produced, manfactured, mined, handled, or in any other manner worked on in any state; and for the purpose of this act an employee shall be deemed to have been engaged in the production of goods *if such employee was employed*

in producing, manufacturing, mining, handling, transporting, *or in any other manner* working on such goods, or *in any process or occupation necessary to the production thereof,* in any state." (Italics ours.)

The argument that the petitioner could not be assumed to intend or expect the oil or gas would move in interstate commerce is wholly inconsistent with the common knowledge of every American school boy.

If the argument is sound that the intention of an independent contractor controls, then you have this situation: The slush pit and cellar are practically always dug by an independent contractor. The derrick is constructed by an independent contractor. Drilling the holes down to the producing strata is done by the independent contractor. The casing is run and cemented by an independent contractor. The cable tools are installed and operated by an independent contractor. Who is going to get the benefit of this act? Nobody but the pumper in the production department. The purpose of this act is not to help just one man but to help all the employees in that particular job.

It is contended that the bulletin issued by the administrator and the holding of this court in the Darby case put the construction on the word "employer" that petitioner seeks to apply here. There was no independent contractor in the Darby case. Neither was the administrator's bulletin dealing with an independent contractor. It is the intention of the owner that controls, not the intention of the independent contractor who dug the slush pit or who set the casing or who built the derrick or who operated the rotary tools. It is the entire job that controls, and that was all under the control of the owner. In other words, the independent contractor has no intention

about the matter one way or the other. What does he care so long as he gets his job done and is paid for it? It is the owner who is interested in the production.

WHEREFORE, we most earnestly insist that this case should in all things be affirmed.

Respectfully submitted,

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No. 21

In the Supreme Court of the United States

OCTOBER TERM, 1942

WARREN-BRADSHAW DRILLING COMPANY,
PETITIONER

v.

O. V. HALL, INDIVIDUALLY AND AS AGENT OF
W. N. SLAID, ET AL

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF ON BEHALF OF THE ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR, AS AMICUS CURIAE

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The Solicitor General submits this brief on behalf of the Administrator of the Wage and Hour Division, United States Department of Labor, as *amicus curiae*.

OPINIONS BELOW

The opinion of the District Court (R. 138–141) is reported in 40 F. Supp. 272. The opinion of the Circuit Court of Appeals (R. 157–162) is reported in 124 F. (2d) 42.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered December 9, 1941 (R. 162). The petition for writ of certiorari was filed January 19, 1942, and granted June 8, 1942 (R. 164). The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether respondents were proved to be engaged in "the production of goods for commerce" within the meaning of Section 7 (a) of the Fair Labor Standards Act.

STATUTE INVOLVED

The pertinent provisions of the Fair Labor Standards Act appear in the Appendix, *infra*, p. 23.

STATEMENT

On February 3, 1941, respondents filed a complaint against petitioners pursuant to Section 16 (b) of the Act, alleging that while employed by petitioner they had been engaged in the production of oil for commerce but had not been paid overtime compensation in accordance with the requirements of Section 7, although demand had been made for such compensation (R. 1–5). Petitioner's answer disputed the applicability of the Act to respondents' employment and denied violations of the statute (R. 6–7). The pertinent

evidence adduced at the trial may be summarized as follows: Petitioner is the owner and operator of rotary drilling equipment and machinery. Under contract with the owners or lessees of oil lands (R. 6, 22–29), it undertakes to drill holes to a depth short of the oil sand stratum. As a hole is drilled, casing is inserted. When an agreed-upon depth is attained, the casing is cemented, the drill pipe removed, the rigging dismantled, and the machinery and rotary drilling crew are dispatched to other locations (R. 35–37, 39, 42, 57). When the rotary drilling equipment is removed, a "cable crew" undertakes to "bring in" or "shoot" the well with cable tools and to demonstrate whether or not it is a dry hole (R. 38–39, 49). Respondents, who were employed by petitioner as members of his rotary drilling crews, worked on approximately thirty-two wells (R. 91) in the Panhandle Oil Field of Texas. Thirty-one of these wells produced oil (R. 75, 78, 79) and one produced gas (R. 78). Petitioner was not owner or lessee of any of the lands on which respondents worked and appeared to have no interest therein or in the oil produced therefrom.

The wells had pipe-line connections (R. 79, 83, 85), many of them being with petroleum companies operating on a national scale (R. 14–22, 85); "any of these pipe lines" transports oil out of Texas (R. 80). A large portion of

crude oil which goes to refineries in Texas thereafter passes out of the State in the form of refined products (R. 81, 82, 84, 105–106, 109–110).

Respondents were employed on the basis of an eight-hour day, and received fixed salaries of $6.50 to $11 per day; they regularly worked seven days a week (R. 31–32, 46–47, 49, 53, 57–58; 59, 61, 65, 70–71). There was no agreement providing for an hourly rate of pay or that the weekly salary included extra compensation for overtime hours (*ibid.*; R. 161).

The District Court held that respondents were engaged in the production of oil for commerce and had not been compensated for overtime hours in accordance with Section 7 of the Act (R. 138–141). The court entered judgment for each plaintiff in the amount of unpaid compensation found to be due him and for an equal additional amount as liquidated damages (R. 141–143). The Circuit Court of Appeals affirmed the judgment (R. 157–162).

ARGUMENT

RESPONDENTS WERE ENGAGED IN THE PRODUCTION OF GOODS FOR INTERSTATE COMMERCE AND WERE WITHIN THE COVERAGE OF THE FAIR LABOR STANDARDS ACT

The Government does not discuss, in this brief, whether the compensation paid respondents by petitioner satisfies the overtime requirements of Section 7 of the Act. This question appears to have been authoritatively settled by this Court in

Overnight Motor Transportation Co. v. *Missel*, No. 939, last Term, decided June 8, 1942, petition for rehearing pending. The argument herein is addressed to the question whether in the performance of services for petitioner as their employer, respondents were engaged in the production of goods for commerce.

Section 7 of the Act provides that "no employer shall * * * employ any of his employees who is engaged in commerce or in the production of goods for commerce" for more than a specified number of hours per week, unless "time and a half" is paid for the extra hours. Section 3 (j) reads as follows:

> "Produced" means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any process or occupation necessary to the production thereof, in any State.

It is evident that the application of the Act to respondents turns upon whether they were "engaged * * * in the production of goods for commerce" (Sec. 7). This determination, in turn, rests upon whether they were engaged in any of the activities enumerated in Section 3 (j), including "any process or occupation neces-

sary to the production * * *." The statute does not purport to define "produced" or production" beyond the language of Section 3 (j), or to indicate what processes are "necessary to the production," nor has the Congress provided for a preliminary administrative proceeding to assist the courts in ascertaining whether the particular situation is in the regulated area; that question is left to be determined by the courts upon the facts of individual cases as they arise. *Kirschbaum* v. *Walling,* No. 910, last Term, decided June 1, 1942.

It appears from a reading of Sections 7 and 3 (j) that it was the congressional purpose that the application of the overtime pay provisions of the Act should be determined, by reference not to the nature of the employer's enterprise, but rather to the character of the activities of his employees. This construction has been settled by this Court in *Kirschbaum* v. *Walling, supra.* It was the respondents' burden, therefore, to demonstrate that in the course of performing their services for the petitioner and without regard to the nature of his business, they were, as his employees, engaged in the production of goods, and that such production was for interstate commerce.

A. RESPONDENTS WERE ENGAGED IN THE PRODUCTION OF OIL OR IN A PROCESS NECESSARY TO PRODUCTION WITHIN THE MEANING OF SECTION 3 (j)

There is no known method for the commercial production of oil which does not include piercing

the surface of the earth and holing down to the oil level or horizon. There are two modern methods used for the production of oil, namely, the "cable tool method" which employs the principle of percussion and the "rotary drilling method" which employs the principle of boring. It has been estimated that 60 percent of the well-digging rigs in the United States are of the rotary drilling variety,[1] such as were set up, operated, dismantled, and then removed to other oil lands by respondents while they were in the employ of petitioner.

To attempt to demonstrate that drilling is necessary to oil production would be to elaborate the obvious. The Administrator takes the position, generally, fortified by judicial opinion, that indispensability to production is not a condition of coverage, but if it were, he would be justified in saying that drilling is a process or activity indispensable in the production of oil. The direct and intimate relationship of drilling to the actual extraction of oil from the substratum warrants the conclusion that it is not only indispensable to the production of oil but, indeed, *is an integral part of the productive process.*

In the Fair Labor Standards Act Congress was concerned with the assurance that the "production" of goods passing in commerce met certain modest labor standards. *United States* v. *Darby,* 312 U. S. 100, 113–115. To obtain the widest possible achievement of that purpose, Con-

[1] Leven, *Done in Oil* (1941), p. 38.

gress defined "produced" in the most sweeping terms (Sec. 3 (j)). Thus, an employee is deemed to have been engaged in the production of goods if he was employed in "*producing*, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any process or occupation necessary to the production thereof * * *. [Italics supplied.] These are not words of limitation: they evidence an intention, rather, to encompass a broad field of economic activity which results in "goods" entering the channels of interstate commerce. Thus, one who is engaged by a coal mining company to assist in digging a shaft is engaged in "mining" within the meaning of Section 3 (j), although he may never come into contact with the "goods" which are ultimately extracted and then placed in the channels of interstate commerce. Similarly, it is plain that respondents who drilled to a prescribed depth by means of a rotary rig and then dismantled the rig, removed it, and left to a cable tool crew the work of "bringing in" the oil well were engaged or employed in the "production" of oil, although they never came into contact with the "goods."[2]

[2] It has been well established that participation in the physical process of making goods is not required by the phrase "engaged in producing" goods, *Kirschbaum* v. *Walling*, 62 Sup. Ct. 1116, 1120; and that an employee to be entitled to the benefits of the Fair Labor Standards Act need not come "in actual, physical contact with the goods produced." *Mid-Continent Pipe Line Co.* v. *Hargrave*, 129 F. (2d) 655, 657 (C. C. A. 10).

Respondents, it is true, may never have seen the oil with the production of which, in part, they credit themselves. The service they performed, nevertheless, was so closely related to production to warrant considering it a part thereof. Oil companies engaged in the production of petroleum either maintain their own rotary drilling crews or contract the job out to a specialist who goes from site to site with his crews and machinery drilling wells for the owners or lessees of oil lands.[3] It would seem that a contractor operating under such conditions and circumstances performs a mechanical service which is a part of the economic function of the oil industry, namely, the production of oil.

It is not here contended by the Administrator that the "production of oil" comprehends every conceivable operation and process leading up to the extraction of oil from the ground, including

[3] "The major oil companies, as a rule, prefer to do their own oil well drilling, and are usually well equipped for such operations in most of the active fields. * * * On the other hand, many of the big oil companies also recognize the advantage of letting out large parts of their drilling operations under contract to regular well-drilling contractors who specialize in such work. * * * Many oil companies, especially the smaller ones, prefer to have their drilling or the greater part of it done by regular independent well-drilling contractors. This method has many advantages, not only for small companies but for the larger ones as well, because such contractors generally specialize in certain types of drilling or concentrate upon specific fields, and thus become especially expert and familiar with such types of fields." Leven, *Done in Oil* (1941), pp. 371–372.

the financing of the corporation, leasing the oil lands, prospecting, building sheds, storehouses, derricks, tanks, etc.[4] It is sufficient that drilling to a prescribed depth below the earth's surface just short of reaching the reservoir of oil is an operation that appears to be an integral part of the complex of processes which constitute production in the oil industry.[5]

In *Kirschbaum* v. *Walling*, No. 910, last Term, decided June 1, 1942, this Court had occasion to

[4] "The production branch of the American petroleum industry falls logically into two principal parts, that relating to exploration for, and development of, oil fields, and production proper, the secondary process which is concerned with the actual and continuing extraction of the product to the point of economic exhaustion of the possibilities. It is entirely possible to be in the 'production division' of the business and never send out a land scout, drill a well, or hire a geophysicist." Shuman, *The Petroleum Industry, An Economic Survey*, University of Okla. Press (1940) p. 29. The Government does not urge upon this Court as general a conception of production as that which is current in the industry, but suggests that well-drilling, at least, is embraced by that term.

[5] This position was given forceful expression by Judge Hutcheson in the opinion of the Court of Appeals below in the following language: "In the practical operation of the oil business, no one would accept the view that rotary drilling is not *a part of the production of oil* and that rotary drilling crews are not a part of the field forces actually engaged in its production. Only by the sheerest quibbling could they be excluded from the operation of laws covering such field forces. * * * appellant and its employees are engaged generally in mining for and the production of oil in this state * * *." [Italics supplied.] (R. 160, 161, 124 F. (2d) 42, 44.)

give full consideration to the degree of relationship to production which would justify consideration of a process or occupation as "necessary" thereto. It was stated that the work of employees in that case (loft maintenance employees) "had such a close and immediate tie with the process of production for commerce, and was therefore so much an essential part of it, that the employees are to be regarded as engaged in an occupation 'necessary to the production of goods for commerce'." The only material distinction between the *Kirschbaum* case and the instant case, insofar as the relation of the work to production is concerned, is that in the *Kirschbaum* case the work was of a maintenance character, coincidental in point of time with the productive process which might well have preceded the performance of the services and have continued when the services ceased. In the instant case, however, the close relation of the drilling to the extraction and movement of oil and its physical proximity warrant the conclusion that respondents were engaged in a process or occupation necessary to production.

The legislative history of Section 3 (j) makes it evident that wherever the line was intended to be drawn separating those processes and occupations necessary and those not necessary to production, the activities of respondents fall on

the side of coverage.[6] Certainly, the present language of Section 3 (j) represents a very considerable extension and liberalization of coverage over that contained in the earlier drafts. It was decided, evidently, that it was more desirable for the courts to mark out the area of what was necessary for production than to prescribe an inflexible rule in the formulation of which special cases could not be foreseen or taken into account. If it was originally intended that those making tools and dies used in production should be considered employed in the production of goods, it would seem to follow that those utilizing the tools in the actual process of production are well within the congressional purpose. Further, the apparent intent of Congress to include activities of tool and die workers within the last clause of Section 3 (j) demonstrates that it considered the Act applicable to employees performing activities *preparatory* to production provided those activities had a sufficiently "close and immediate tie with the process of production." *Kirschbaum* v. *Walling, supra,* p. 1121.

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[6] In earlier drafts of the bill introduced in the Senate, the clause "or in any process or occupation necessary to the production thereof, in any State" did not appear; instead there appeared a very specific clause: "or in the making of tools and dies used in the production of such goods in any State." S. 2475, 75th Cong., 1st sess., May 24, 1937, Sec. 2 (a) (24). The corresponding provision of the bill introduced in the House was identical except that it did not contain the phrase "in any State." H. R. 7200, 75th Cong., 1st sess., May 24, 1937, Sec. 2 (a) (24).

B. RESPONDENTS WERE ENGAGED IN MINING WITHIN THE MEANING OF SECTION 3 (j).

Respondents are within the coverage of the Act if they produced goods for commerce (Sec. 7 (a)) and for the purposes of the Act employees are deemed to have produced goods if they were employed in "mining" such goods (Sec. 3 (j)).

The legislative history of Section 3 (j) is silent as to the scope intended to be ascribed by Congress to the term "mining." For purposes other than the Fair Labor Standards Act it might be contended, perhaps, that the term should be limited to processes employed in the extraction of gold, coal, silver, and similar inorganic minerals. The Administrator submits, however, that for the purposes of the Act there are strong considerations which conduce to a broader interpretation of the term to include drilling for the extraction of oil from the earth.

It is doubtful that the term "mining" was intended to be used as a "word of art" (*United States* v. *American Trucking Assns.*, 310 U. S. 534, 545) and it may properly be viewed as taking color from its surroundings and having such significance as might be reasonable considering the purpose of the statute in which it is found. *United States* v. *American Trucking Assns., supra; South Chicago Co.* v. *Bassett*, 309 U. S. 251; *International Stevedoring Co.* v. *Haverty*, 272 U. S. 50. It is recognized that judicial precedents that oil production constitutes mining

should not be determinative of the issue whether it constitutes mining within the meaning of Section 3 (j). They are entitled to weight, however, and justify a conclusion consistent with the position taken by the Administrator.

This Court has held in *Burke* v. *Southern Pacific R. R. Co.*, 234 U. S. 669, 676, 677, 679, that a grant under a statute excluding "all mineral lands" other than coal or iron lands did not convey oil lands. It was there held that oil was a mineral.[1]

In common parlance the extraction of minerals from the earth is referred to as mining. The dictionary definition of the noun "mine" recognizes its application to the extraction of minerals other than ores, precious stones, or coal.[2] Recog-

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[1] See also *United States* v. *Southern Pac. Co.*, 251 U. S. 1; *Ohio Oil Co.* v. *Indiana*, 177 U. S. 190, 202; *Crain* v. *Pure Oil Co.*, 25 F. (2d) 824, 826 (C. C. A. 8); In re *Great Western Petroleum Corp.*, 16 F. Supp. 247 (S. D. Calif.); *Funk* v. *Haldeman*, 53 Pa. St. 229 (1867); *Gill* v. *Weston*, 110 Pa. St. 312, 317 (1885); *Williamson* v. *Jones*, 39 W. Va. 231, 256 (1894); *Kelly* v. *Ohio Oil Co.*, 57 Ohio St. 317, 328 (1897); *Murray* v. *Allred*, 100 Tenn. 100 (1897); *Wagner* v. *Mallory*, 169 N. Y. 501, 505 (1902); *Cornwell* v. *Buck & Stoddard*, 28 Calif. App. (2d) 333 (1938); *Westmoreland & Cambria Natural Gas Co.* v. *De Witt*, 130 Pa. St. 235 (1889); *Isom* v. *Rex Crude Oil Co.*, 147 Calif. 659 (1905).

Oil has been described by Congress at various times as a mineral. 15 Stat. 58, 59, c. 41, sec. 1; 15 Stat. 125, 167, c. 186, sec. 109; 29 Stat. 526, c. 216; 32 Stat. 691, 702, c. 1369, sec. 42; 36 Stat. 847, c. 421, sec. 2.

[2] "Mine * * * 1. a. A pit or excavation in the earth, from which ores, precious stones, coal, *or other mineral substances* are taken by digging *or by any of various other min-*

nition of oil well drilling as a mining operation and of petroleum as a mineral obtained by mining processes is also found in the fact that study, analysis, and research with respect to the petroleum industry are conducted, and the statistics thereof are collected, by the Bureau of Mines of the Department of Interior.[9] Moreover, it is significant that the Bureau of Census of the Department of Commerce classifies petroleum wells as mines.[10]

This Court seems not to have been called upon to go beyond its holding that petroleum is a mineral and to decide that the process of extracting it from the earth is "mining."[11] In *Shell Pe-*

ing methods; * * *." [Italics supplied.] Webster's New International Dictionary, unabridged (2d ed. 1939).

[9] Minerals Yearbook Review of 1940; U. S. Dept. Int., Bureau of Mines, *Crude Petroleum and Petroleum Products*, pp. 933–1027. It is interesting to note that the act appropriating funds to the Department of Interior, Bureau of Mines for the fiscal year ending June 30, 1943, appropriates out of the Treasury funds "To conduct inquiries and scientific and technologic investigations concerning the *mining*, preparation, treatment, and use of mineral fuels * * * belonging to or for the use of the United States * * *" (Pub. No. 645, 77th Cong., 2d sess., sec. 1, p. 39). [Italics supplied.]

[10] The Bureau of the Census, Statistical Abstract of the United States, 1941, in Table No. 792, p. 803, under a column designated "Number of mines and quarries" shows 340,990 petroleum "mines." See also Table No. 796, pp. 806, 808, in which petroleum is classified as a mineral product.

[11] In *Champlin Refining Co.* v. *Corporation Comm. of Oklahoma*, 286 U. S. 210, in connection with a discussion of whether the proration orders of the commission were in con-

troleum Corp. v. *Candle*, 63 F. (2d) 296 (C. C. A. 5),[12] however, the Circuit Court of Appeals said (p. 297): "Oil production from the earth is to be classed as mining."[13]

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flict with the commerce clause of the Federal constitution, it was said at p. 235: "* * * It is clear that the regulations prescribed and authorized by the Act and the proration established by the commission apply only to production and not to sales or transportation of crude oil or its products. *Such production is essentially a mining operation.* * * *." [Italics supplied.] In *United States* v. *Southern Pac. Co.*, 251 U. S. 1, 11–14, Mr. Justice Van Devanter consistently referred to the process of petroleum extraction as "oil mining."

[12] This was a suit for labor, rental of oil well casing, and the value of casings retained. The case turned on the point of what constituted a "mining partnership."

[13] A similar result was reached in In re *Great Western Petroleum Corp.*, 16 F. Supp. 247 (S. D. Calif.), which involved a California statute requiring conditional sales contracts with respect to "equipment and machinery used for mining purposes" to be recorded. The question was whether particular contracts, unrecorded, were binding upon a trustee in bankruptcy. It was said at pp. 249-250: "The discovery of petroleum has led to a change in terminology. Persons engaged in the industry, geologists and courts generally began to consider oil as a 'mineral' and the process of extracting oil from the ground as 'mining.' Such they are considered at the present time. [Citing cases.] * * * But oil is *now* so generally considered a mineral and the extraction of oil is *now* so generally considered as mining, that we must assume that the California Legislature of 1933, in using the word 'mining' in the section, used it in the sense in which that word had come to be used *at that time* and not in the sense in which a similar word might have been used by the California Legislature of 1872." Accord (by same district judge) *United States* v. *Standard Oil Co. of California*, 21 F. Supp. 645, 662 (S. D. Calif.); *Gill* v. *Weston*,

It is suggested that these precedents give weight to the conclusion that in drilling the oil well with rotary machinery to a depth just short of the oil sands, respondents were employed in a process that might reasonably be described as mining.

The Government does not pretend that the significance of "mining" in Section 3 (j) is entirely free from doubt, but contends that a reasonable construction of the provision, appearing, as it does, in a remedial statute,[11] justifies an interpretation of the term which includes respondents' activities. Surely, one who is engaged by a coal mining company to assist in digging a vertical shaft, but who is discharged before the vein of coal is reached, was, during the period of his employment, engaged in the performance of "mining" services. Such an individual performs the same industrial function as that performed by respondents, namely, piercing the earth by drilling, digging, boring, or otherwise excavating, in order to achieve a passageway for the removal of minerals captured in a substratum. The accidental fact that the extraction of coal requires a larger passageway than oil and that different tools and machinery are employed cannot affect the identity of the functions performed so long as the

110 Pa. St. 312, 317 (1885); *Funk* v. *Haldeman*, 53 Pa. St. 229 (1867). But cf. *Cornwell* v. *Buck & Stoddard*, 28 Calif. App. (2d) 333 (1938).

[11] *Fleming* v. *Hawkeye Pearl Button Co.*, 113 F. (2d) 52 (C. C. A. 8).

excavating takes place for the purpose of extracting a mineral.

By associating "producing" in Section 3 (j) with words of broad and general intendment such as "manufacturing, mining, handling, transporting," Congress apparently intended to encompass all industrial functions and operations having a close and immediate tie with the processes of production for commerce. No particular or specific operation is singled out for mention. Congress saw fit to deal only in the broadest and most general concepts. This consideration lends weight to the view that "mining" was not conceived of as a limited operation or in a highly technical sense. It is our position that Congress attempted an enumeration of general industry groups rather than operations, namely, the producing, manufacturing, mining, handling, and transporting industries. Each such industry group includes many operations and requires the performance of services which, under technical dictionary definition, might not come within the term by which it is identified. The congressional purpose, however, to establish labor standards applicable to the rate clerk, checker or inspector in the transporting industry who does not actually transport as well as to the driver who operates the truck can not be denied. *Overnight Motor Transportation Co.* v. *Missel, supra.* Similar, that purpose would appear to extend to the individual who

drills an oil well by rotary process to a point short of the oil level as well as to the individual who then takes over and "brings in" the oil by means of cable tools. They are both engaged in the process of mining to the same extent as one who digs a shaft for the production of coal.

C. RESPONDENTS WERE ENGAGED IN PRODUCTION FOR COMMERCE NOTWITHSTANDING PETITIONER'S LACK OF FINANCIAL INTEREST IN THE OIL PRODUCED OR ACTUAL KNOWLEDGE OF ITS DISPOSITION

The Government makes no claim that the application of the Act to petitioner can rest upon the expectation of the well owner, rather than of petitioner, concerning the movement of the oil in interstate commerce. The criterion of application was expressed by this Court in *United States* v. *Darby*, 312 U. S. 100, and it is clear that the "production for commerce" intended by Congress includes—

> * * * production of goods, which, at the time of production, the employer, according to the normal course of his business, intends or expects to move in interstate commerce although, through the exigencies of the business, all of the goods may not thereafter actually enter interstate commerce (p. 118).

Petitioner disavows any intention or expectation with respect to the disposition of the oil to the production of which the drilling contributed

and appears to contend that inasmuch as it is not the owner or operator of the wells drilled nor even a member of the oil producing, refining, or distributing industry, it is not chargeable with knowledge of the interstate character of the product.

The decisive question is whether, at the time of the production—here at the time of petitioner's drilling operations—there were reasonable grounds for petitioner to anticipate that a substantial portion of the production of the wells drilled would move into other States.[16] Although petitioner seeks to avoid a presumption of such anticipation on the ground that "the oil business was not petitioner's business" (Pet. Br. 7),[17] one need not be an oil well operator to be aware that Texas constitutes a principal petroleum reservoir of the Nation. In any event, petitioner was at all times closely identified with the business of

[16] The record shows that all of the 32 wells drilled by respondents, excepting one which produced natural gas, yielded oil. The probability of drilling in the Texas Panhandle area resulting in productive wells is great. Of the 442 wells drilled in that area in 1939, only 33 were dry (approximately 7.5 percent), and of 560 wells drilled in 1940, only 24 were dry (approximately 4 percent). *Petroleum Facts and Figures*, American Petroleum Institute (7th ed. 1941), p. 80; 39 Oil and Gas Journal 52 (Jan. 30, 1941).

[17] Functionally and organizationally drilling for oil is a part of the "oil business" to the same extent that putting in roads in timberland is a part of the lumbering business. Many large oil companies engaged in production maintain their own rotary drilling equipment and crews. See note 4, *supra*.

oil production [18] and could not have been ignorant of the fact that by far the greater portion of the production of Texas fields is shipped out of that State as crude oil or in the form of refined

[18] A claim of ignorance and disinterest similar to that advanced by petitioner here was made in *Fleming* v. *Enterprize Box Co.*, 37 F. Supp. 331 (S. D. A. Fla.), affirmed, 125 F. (2d) 897 (C. C. A. 5), certiorari denied, 62 Sup. Ct. 1312, by a manufacturer of cigar boxes against whom an injunction was sought restraining further violation of the Fair Labor Standards Act. The court pointed out that all of the manufacturer's sales were made to cigar factories in the city of Tampa, Florida, that in excess of 95 percent of the cigars produced in that city were sold outside of the State of Florida, and that the president of the box manufacturing company had for a number of years been engaged as an employee in the cigar factory. On page 334–335 the court stated:

"* * * He, therefore, is presumed to have had more than a general knowledge of the cigar and cigar-box businesses. He must have known that the cigar industry in Tampa for a great many years has been one of the prime industries of Tampa, and that many millions of cigars are manufactured annually in Tampa and sold throughout the greater part of the United States. He must have known that only a small portion of the output of cigars made in Tampa were consumed, or could have been consumed, in the State of Florida. * * * It seems safe to say that one is charged with knowing that which he should have known. It also seems reasonable to conclude that the Act in question cast upon the manufacturer the duty of making some inquiry in order that he might know whether or not he is conducting his business under the law. One could hardly escape a duty imposed upon him by law merely by saying 'I did not know and I made no effort to find out the facts.' Be that as it may, and without deciding the point, the Court is led to conclude from the evidence that the defendant knew when it sold the goods so produced that the same were intended to be shipped, delivered, or sold in interstate commerce."

products.[19] It is not unreasonable to infer that petitioner was also intimately acquainted with the marketing arrangements prevailing in the fields: that oil from a particular well is commingled in the course of transportation via pipe line in Texas with the products of other wells, so that a separate identity of the comparatively small portion destined for ultimate consumption in Texas is not preserved. Unless petitioner had some familiarity with unusual marketing arrangements made by the operators for whom it drilled wells—a familiarity which it is prompt to deny—it must have anticipated that the oil which it helped to produce would be distributed,

[19] In *St. John* v. *Brown*, 38 F. Supp. 385, 388 (N. D. Tex.), the court said: "They [the employers] must be held to know that which is of such common knowledge that the courts may take judicial knowledge of it, viz., that the greater percentage of all crude oil produced in Texas, certainly such as finds its way into major pipe lines, goes out of our State, though it may be in the form of by-products, for ultimate consumption."

During 1939, some 33 percent of all crude oil produced in Texas was sent to refineries in other States or foreign countries. Bureau of Mines, *Crude Petroleum and Petroleum Products Review of 1939* (1940), p. 37. About 84 percent of Texas refined gasoline was shipped out of Texas during that year (*ibid.*, p. 65). Some 91 percent of Texas refined kerosene was shipped out of Texas during 1938 (*ibid.*, pp. 46, 68). About 71 percent of Texas refined gas oil and fuel oils was shipped out of Texas during 1938 (*ibid.*, pp. 46, 77). Gas, kerosene, gas oil, and fuel oil comprised approximately 91 percent of total national petroleum products in that year (*ibid.*, p. 46).

refined, and disposed of in accordance with the familiar arrangements characterizing the industry as a whole. The pipe-line connections at the wells drilled by petitioner (see *supra*, p. 3) conclusively negative any indication that the wells occupied any special position in the productive and distributive scheme.[20] One cannot "shut his eyes or his ears to the inlet of information" (*Simmons Creek Coal Co.* v. *Doran*, 142 U. S. 417, 437) and escape Federal regulation on the basis of disingenuousness or naivete.

The Administrator's interest in the question whether petitioner has sufficiently proved that the production in which it was engaged was "for commerce" arises from his concern with continued maintenance of Section 16 (b) as an effective instrument for enforcement of the Act. Both of the courts below were satisfied that respondents had amply sustained their burden of proof (R. 140–141, 160–161). It would serve no good purpose for this Court to reverse the judgment below and remand the cause for proof of facts which are matters of common knowledge.

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[20] These pipe lines, which ran into other States, included lines owned by petroleum companies which market their product on a national and international scale. Included on the list of pipe-line connections (R. 14–22, 85) are The Texas Company, Stanolind Oil & Gas Co. (a subsidiary of Standard Oil Co. of Indiana), Sinclair Prairie Oil Co., and Sunray Oil Company.

CONCLUSION

It is respectfully submitted that the judgment of the Circuit Court of Appeals should be affirmed.

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OCTOBER 1942.

APPENDIX

Fair Labor Standards Act, c. 676, 52 Stat. 1060 (29 U. S. C., sec. 201 et seq.):

SEC. 3. As used in this Act—* * *

(j) "Produced" means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any process or occupation necessary to the production thereof, in any State.

* * * * *

SEC. 7. (a) No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce—

(1) for a workweek longer than forty-four hours during the first year from the effective date of this section,

(2) for a workweek longer than forty-two hours during the second year from such date, or

(3) for a workweek longer than forty hours after the expiration of the second year from such date, unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

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SUPREME COURT OF THE UNITED STATES.

No. 21.—October Term, 1942.

Warren-Bradshaw Drilling Company, *vs.* O. V. Hall, Individually and as Agent of W. N. Slaid, et al. } On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[November 9, 1942.]

Mr. Justice Murphy delivered the opinion of the Court.

We are concerned here, as in *Kirschbaum Co.* v. *Walling*, 316 U. S. 517, with a problem of statutory delineation, not constitutional power, in the application of the Fair Labor Standards Act[1] to a particular situation. This is an action to recover unpaid overtime compensation and an equal amount as liquidated damages brought by respondent employees under § 16(b). We must decide whether respondents are engaged "in the production of goods for commerce" within the meaning of § 7(a) of the Act. The district court held that they were so engaged, and, since petitioner had failed to compensate them for overtime hours as required by § 7(a), accordingly rendered judgment for each respondent in the appropriate amount.[2] The Circuit Court of Appeals affirmed with an immaterial modification,[3] and the case comes here on certiorari.

The application of the Act depends upon the character of the employees' activities. *Kirschbaum Co.* v. *Walling, supra*, p. 524. The burden was therefore upon respondents to prove that in the course of performing their services for petitioner and without regard to the nature of its business, they were, as its employees, engaged in the production of goods, within the meaning of the Act, and that such production was for interstate commerce. We agree with both courts below that respondents have sustained that burden.

Petitioner is the owner and operator of rotary drilling equipment and machinery, who contracts with the owners or lessees of

[1] 52 Stat. 1060, 29 U. S. C. § 201 *et seq.*
[2] 40 F. Supp. 272.
[3] 124 F. 2d 42.

oil lands to drill holes to an agreed-upon depth short of the oil sand stratum. When that depth is reached, the rotary rig is removed, and the machinery and crew move on to other locations. For reasons peculiar to the oil industry, a cable drilling crew then undertakes with cable tools to "bring in" the well or else demonstrate that it is a dry hole. Respondents were employed by petitioner as members of its rotary drilling crew and worked on approximately thirty-two wells in the Panhandle Oil Field of Texas; thirty-one of those wells produced oil, and the other one produced gas. Petitioner was not the owner or lessee of any of the lands on which respondents drilled, and was not shown to have any interest therein or in the oil produced.

In § 3(j) Congress has broadly defined the term, "produced",[4] and has provided that "an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any process or occupation necessary to the production thereof, in any State". Whether or not respondents, in drilling to a specified depth short of oil, may be regarded as engaged in producing or mining, and we certainly are not to be understood as intimating that they may not, recognition of the obvious requires us to hold that at the very least they were engaged in a "process or occupation necessary to the production" of oil. Oil is obtained only by piercing the earth's surface; drilling a well is a necessary part of the productive process to which it is intimately related. The connection between respondents' activities in partially drilling wells and the capture of oil is quite substantial, and those activities certainly bear as "close and immediate tie" to production as did the services of the building maintenance workers held within the Act in *Kirschbaum Co.* v. *Walling*, *ante*, pp. 525-526.

The evidence supports the finding that some of the oil produced ultimately found its way into interstate commerce. All the wells had pipeline connections, some of them being with petroleum companies operating on a national scale, wherein the oil was commingled with the production of other wells. Officials of the State of Texas testified that some crude oil is shipped out of the State by these pipelines and that a large percentage of

4 "'Produced' means produced, manufactured, mined, handled, or in any other manner worked on in any State;"

crude oil sent to refineries in Texas thereafter passes out of the State in the form of refined products.

Petitioner contests the applicability of the Act on the ground that it, as an independent contractor not financially interested in the wells, had no intention, expectation or belief that any oil produced would be shipped in interstate commerce, and cites as support *United States* v. *Darby*, 312 U. S. 100, 118, where it was said that the "production for commerce" intended by Congress includes "at least production of goods, which, at the time of production, the employer, according to the normal course of his business, intends or expects to move in interstate commerce although, through the exigencies of the business, all of the goods may not thereafter actually enter interstate commerce". Respondents counter with the proposition that it is enough that the owners of the oil wells expected the oil produced to move across state lines, but the Government does not ask,[5] and there is no need for us to pass upon that proposition. The Act extends at least to the employer who expects goods to move in interstate commerce. *United States* v. *Darby, supra.* Assuming that such expectation, or a reasonable basis therefor, was necessary on petitioner's part before the application of the Act to petitioner, it is here present. The record contains ample indication that there were reasonable grounds for petitioner to anticipate, at the time of drilling, that oil produced by the wells drilled, would move into other states. Petitioner, closely identified as it is with the business of oil production, cannot escape the impact of the Act by a transparent claim of ignorance of the interstate character of the Texas oil industry. *St. John* v. *Brown*, 38 F. Supp. 385, 388; cf. *Fleming* v. *Enterprise Box Co.*, 37 F. Supp. 331, 334-335, affirmed, 125 F. 2d 897.

One final contention merits but slight consideration. Respondents were employed on the basis of an eight hour day and regularly worked seven days a week, receiving fixed wages ranging from $6.50 to $11 per day. There was no agreement providing for an hourly rate of pay or that the weekly salary included additional compensation for overtime hours. Petitioner urges that it complied with the overtime compensation requirements of the Act because respondents received wages in excess of the statu-

[5] The Solicitor General submitted a brief on behalf of the Administrator of the Wage and Hour Division, United States Department of Labor, as amicus curiae.

tory minimum wage, including time and one-half of that minimum wage for all overtime hours, which wages respondents impliedly agreed included overtime compensation by accepting them. A similar argument was squarely rejected in *Overnight Motor Co.* v. *Missel*, 316 U. S. 572.

Affirmed.

Mr. Justice ROBERTS.

I dissent, as I did in *Kirschbaum* v. *Walling*, 316 U. S. 517, and for the same reason. But I think the present a more extravagant application of the statute than that there approved. We may assume that Congress, in drafting the Act, had in mind the practical, as distinguished from a theoretical, distinction between what is national and what is local,—between what, in fact, touches interstate commerce and what, in truth, is intrastate.

The phrases on which respondent relies are these: An employee "who is engaged in [interstate] commerce or in the production of goods for [interstate] commerce." . . . (§ 7a); and "'Produced' means produced, manufactured, mined, handled or in any other manner worked on in any State; and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any process or occupation necessary to the production thereof, in any State." (§ 3j.)

The opinion disavows any thought that the petitioners may be classed as those who mine the oil which passes into commerce; but this seems to be a reservation intended not to preclude such a holding. The Court relies, rather, on the Act's inclusion of anyone employed "in any process or occupation necessary to the production" of goods for commerce.

The reasoning seems to be as follows. The oil will pass into commerce if it is mined. But it cannot be mined unless somebody drills a well. An independent contractor's men do part of the drilling. Their work is "necessary" to the mining and the transportation of the oil. So they fall within the Act.

This is to ignore all practical distinction between what is parochial and what is national. It is but the application to the practical affairs of life of a philosophic and impractical test. It is but to repeat, in another form, the old story of the pebble thrown into the pool, and the theoretically infinite extent of the resulting waves, albeit too tiny to be seen or felt by the exercise of one's senses.

The labor of the man who made the tools which drilled the well, that of the sawyer who cut the wood incidentally used, that of him who mined the iron of which the tools were made, are all just as necessary to the ultimate extraction of oil as the labor of ~~petitioners~~. Each is an antecedent of the consequent,—the production of the goods for commerce. Indeed, if ~~petitioners~~ were not fed, they could not have drilled the well, and the oil would not have gone into commerce. Is the cook's work "necessary" to the production of the oil, and within the Act?

I think Congress could not and did not intend to exert its granted power over interstate commerce upon what in practice and common understanding is purely local activity, on the pretext that everything everybody does is a contributing cause to the existence of commerce between the states, and in that sense necessary to its existence.